

**VIRGINIA JUVENILE
LAW HANDBOOK
FOR
SCHOOL ADMINISTRATORS
2002 Update**

**Developed for the Virginia Department of Criminal
Justice Services**

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The ***Juvenile Law Handbook for School Administrators*** was originally developed as a project of the School Safety Task Force, an interagency initiative of the Crime Prevention Center at the Virginia Department of Criminal Justice Services and the Virginia Department of Education.

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Special thanks for their contributions to the Juvenile Law Handbook for School Administrators are extended to

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Diana Gray, Steve Pullen and all regional offices of the Virginia Department of Juvenile Justice
Diane Atkinson, Arlene Cundiff, and Michelle Hathcock of the Virginia Department of Education

This project was initially supported with funds provided by the Office of the Governor through the U. S. Department of Education's Safe and Drug-Free Schools and Communities Act grants program. Points of view or opinions contained herein do not necessarily represent the official position or policies of the Office of the Governor or the U. S. Department of Education.

Acknowledgments

Virginia Juvenile Law Handbook: 1999 Update Advisory Committee

The ***Virginia Juvenile Law Handbook for School Administrators*** was originally published in January 1998. The **1999 Update** includes laws enacted by the General Assembly during its 1998 and 1999 Sessions; related policies and resources have also been updated.

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Virginia Juvenile Law Handbook: 2002 Update

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Special thanks to William Muse, Office of the Attorney General, for his review of the **2002 Update** and to Patricia Moran for assistance in researching updates.

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I. INTRODUCTION

Purpose of the Juvenile Law Handbook

The primary purpose of the ***Virginia Juvenile Law Handbook for School Administrators*** is to provide a resource guide for school administrators and other school personnel who on a daily basis are responsible for not only the education of youth, but also for their safety and welfare. According to ***Creating Safe and Drug-Free Schools: An Action Guide***,

The law is at the heart of every major school safety issue today. Laws are intended to articulate the reasonable standards that define the delicate balance between student rights and student responsibilities. The law proclaims what must be done. The law constitutes a code of professional expectations for school administrators and youth-serving professionals.

Development of this ***Handbook*** is a School Safety initiative and, as such, it is intended to promote understanding and collaboration between educators and juvenile justice professionals. The ***Handbook*** is designed specifically to be of help to school division central office and building administrators, guidance counselors, and school social workers/visiting teachers (who often work closely with juvenile court and law -enforcement personnel). School Resource Officers (SRO) and other law-enforcement officers may also find the ***Handbook*** a resource for effective collaboration. It may also serve as a resource for law-related education programs, which are growing in Virginia.

This ***Virginia Juvenile Law Handbook for School Administrators*** is intended as a **resource**. It is not intended as a prescriptive guide for action. In all matters, school administrators should follow local school board policy and consult with appropriate legal resources (e.g., School Board Attorney, County Attorney, or Commonwealth's Attorney).

New laws are enacted and old ones amended each year by the Virginia General Assembly. Courts' interpretations of laws also impact policies and procedures. For this Handbook to remain a viable resource, it must remain current. The ***2002 Update*** includes changes in laws as well as relevant policy and resource updates.

Organization of Handbook

The ***Virginia Juvenile Law Handbook for School Administrators*** is designed to serve as a resource to schools. It is organized into ten sections, which are as follows:

Section I. INTRODUCTION sets forth the purpose of the ***Handbook*** and its intended audience and provides an overview of the organization and format of the content.

Section II. JUVENILE JUSTICE IN VIRGINIA describes the organization of juvenile justice in Virginia, including the Department of Juvenile Justice, the functions of Court Service Units, sanctions used with juvenile offenders, and community-based programs. This section also provides background on the philosophy of juvenile justice in Virginia and the use of graduated sanctions.

Section III. OFFENSES is intended as a quick guide to the key elements of specific offenses (listed alphabetically) and the penalties associated with each offense if committed by an adult, related reading, and space to enter the related local school board policy section.

Section IV. ALCOHOL, TOBACCO, AND OTHER DRUG OFFENSES begins with a listing of drugs covered by the Drug Control Act of 1970 and an overview of the elements of alcohol, tobacco, and other drug crimes within the ***Code of Virginia***. Next is a discussion of school-related provisions, followed by alcohol-related offenses, then drug-related offenses, and tobacco-related offenses.

Section V. RELATED TOPICS AND ISSUES focuses on a broad range of topics, guided by very specific federal and state laws, with which school administrators must deal on a daily basis. Each topic is discussed briefly and the specific statutory basis is given.

Section VI. CONFIDENTIALITY AND STUDENT RECORDS focuses on school-court communications and the handling of student records with in-depth information on the Family Educational Rights and Privacy Act. The section concludes with a description of the Serious Habitual Offender Comprehensive Action Program (SHOCAP).

Section VII. REFERENCES provides information on the organization of the *Code of Virginia* and the classification of criminal offenses in Virginia. References to felony or misdemeanor offenses are provided for the purpose of indicating their severity. Juveniles are “adjudicated delinquent” rather than found guilty of felony or misdemeanor offenses.

Section VIII. RESOURCES includes a list of organizations, internet sources, and publications which focus on juvenile justice, school safety, and related issues.

Section IX. GLOSSARY provides definitions of selected legal terms.

Section X. LOCAL CONTACTS is a format which can be used by school administrators to list key local contacts in various community resources, agencies, and agencies.

To assist readers in locating information within the document certain icons have been used:



Indicates a **Related Reading** and is used throughout the Handbook to refer the reader to the most recent and authoritative sources of additional information. Related readings are provided for informational purposes only. Inclusion does not imply endorsement by either the Virginia Department of Criminal Justice Services or the Virginia Department of Education.

An additional feature of the Handbook is space reserved for cross-referencing local school board policies related to listed offenses:

Related Local School Board Policy

Update

The “*Update*” is an icon which is designed to assist readers in identifying new or updated information.

II. JUVENILE JUSTICE IN VIRGINIA

Organization of Juvenile Justice in Virginia

Evolution of Virginia's Juvenile Justice System

(Source: Virginia Joint Legislative Audit and Review Commission)

Virginia's juvenile justice system has undergone several major reforms since it was first established more than 80 years ago. The impetus for the reforms in most instances was a concern that the system was not properly designed to address the complex problems associated with juvenile crime. For example, prior to 1950, there was no statewide system of juvenile courts in the Commonwealth. Youthful offenders were tried in adult courts, and if found guilty, were sentenced to indeterminate sentences in private facilities. The ***Code of Virginia*** was later amended to create separate courts for juveniles, but use of these courts was primarily limited to large urban areas.

In 1950, the Virginia General Assembly adopted legislation which created a statewide juvenile justice system based on a newly-established, comprehensive juvenile code. Although there have been several amendments to the juvenile code since that time, many of the key provisions in current law can be traced to the sweeping legislative changes that were put in place in 1950. Notably, this includes language which first gave intake officers the authority to divert youthful offenders away from the criminal adjudication process.

In the early 1970's, partly in response to the rising juvenile crime rates and the growing complexity of delinquency, the General Assembly made major revisions to the juvenile code but maintained the philosophy of diversion and community treatment. As a part of these amendments, both juvenile court judges and intake officers were vested with a significant amount of discretion in deciding the nature of punishment for juvenile offenders. In effect, these changes magnified the emphasis on community diversion as the preferred approach for dealing with young offenders who were not considered a threat to their community.

In 1994, however, the General Assembly appeared to change direction. With arrests for juvenile crime returning to the high levels witnessed in the 1970's, the General Assembly moved to strengthen the punishment provisions in the juvenile code. In the same year, both a Governor's Commission on Juvenile Justice and the Virginia Commission on Youth studied and developed recommendations for juvenile justice reform. While not eliminating the emphasis on diversion, these amendments provided juvenile court judges with the authority to impose stricter punishments on serious juvenile offenders. In addition, this legislation lowered the age from 15 to 14 at which juveniles could be transferred to circuit court for trial and authorized longer sentences for youth placed in correctional facilities. Efforts continue for strengthening juvenile court sanctions as a solution to persistently high juvenile crime rates.

◆ II. JUVENILE JUSTICE IN VIRGINIA

Virginia Department of Juvenile Justice

(Adapted from the Virginia Department of Juvenile Justice Media Kit)

The Department of Juvenile Justice is the executive branch agency that provides services to delinquent youth and protects public safety by assisting the courts in holding juveniles accountable for their actions. Since separating from the Department of Corrections as an independent agency under the Public Safety Secretariat on July 1, 1990, the agency has provided custody and care for committed juveniles, probation and parole supervision, and prevention, diversion and restitution programs in the community. With the increased attention placed on youth crime and its seriousness in the Commonwealth, the 1996 General Assembly mandated that the agency name be changed from the Department of Youth and Family Services to the Department of Juvenile Justice. The Department of Juvenile Justice serves the entire Commonwealth by providing custody and care for committed juveniles, probation and parole supervision, and prevention, diversion and restitution programs in the community. Diversion programs are designed to address problems through non-judicial interventions so that youth are “diverted” from the juvenile justice system.

The Department of Juvenile Justice serves the entire Commonwealth by providing support for community programs and services, community supervision and case management, and custody and care for committed juveniles. The Central Office in Richmond and three regional offices in Roanoke, Fairfax, and Hampton coordinate the functions and funding for the Court Service Units, community programs, community facilities, state facilities, volunteers and private providers.

The mission of the Department of Juvenile Justice is to protect the public through a balanced approach of comprehensive services that prevent and reduce juvenile crime through partnerships with families, schools, communities, law enforcement and other agencies, while providing the opportunity for delinquent youth to become responsible and productive citizens.



Related Reading

Department of Criminal Justice. “Virginia’s Three-Year Plan Update – 2002: Juvenile Justice and Delinquency Prevention Act.”

Available online at: [://info.dcjs.state.va.us/sections/juvenileservices/reports/](http://info.dcjs.state.va.us/sections/juvenileservices/reports/)

Update

Virginia Department of Juvenile Justice Website. Available at: www.djj.state.va.us

Functions of the Court Service Unit

Juvenile Intake

Intake services are provided 24 hours a day at each of the 35 court service units across the state. The intake officer on duty, or on call after business hours, has the authority to receive, review, and process complaints.

Based on the information gathered, a determination is made whether a petition should be filed with the juvenile court and, if so, whether the juvenile should be released to the parents or detained pending a court hearing. To prevent the need for commitment to the Department of Juvenile Justice, the agency provides diversion and referral to other community resources.

Investigations and Reports

Social histories make up the majority of the reports that court service unit personnel complete. These court ordered investigations describe the social adjustment of the person before the court and provide timely, relevant, and accurate data. This information helps the court to select the most appropriate disposition for the case and allows the court service unit to develop appropriate services for the juvenile and the family.

Other reports and investigations completed by court service unit personnel include case summaries by the Family Assessment and Planning Teams, commitment packets for the Reception and Diagnostic Center, interstate compact reports, transfer reports, parole transition reports, ongoing case documentation, and transitional services referral packets.

Domestic Relations

In addition to handling delinquency and Child in Need of Service/Supervision complaints (CHINS), court service units provide intake services for domestic relations complaints. These complaints include non-support, spousal abuse, adjudication of custody (permanent, temporary or protective), abuse and neglect, termination of parental rights, visitation rights, establishing paternity, and emancipation. In certain cases, some services such as referral, supervision, and counseling are provided.

Custody Investigation

Custody investigations require that a counselor gather extensive information on the juvenile's developmental history, school performance, health and medical history. Background reports are prepared on the juvenile and any individual living in the home. Parent/child relationships are explored and on-site visits to the home are made.

Probation

The most frequently used disposition for those juveniles adjudicated guilty of a charge filed against them is probation supervision by the court service unit. Virginia juvenile probation strives to achieve a *'balanced approach.'* This approach focuses on the principles of *community protection* (public safety), *accountability*, and *competency development*.

◆ II. JUVENILE JUSTICE IN VIRGINIA

Locations of Court Service Units

The Central Office in Richmond and three regional offices in Roanoke, Fairfax, and Hampton coordinate the functions and funding for the Court Service Units, community programs, community facilities, state facilities, volunteers and private providers.

District	Localities Served
Region I: Roanoke Office	(540) 853-2407
10 th	South Boston, Appomattox Co., Buckingham Co., Charlotte Co., Cumberland Co., Halifax Co., Lunenburg Co., Mecklenburg Co., Prince Edward Co.
21 st	Martinsville, Henry Co., Patrick Co.
22 nd	Danville, Franklin Co., Pittsylvania Co.
23 rd	Salem, Roanoke Co.
23-A	Roanoke
24 th	Lynchburg, Bedford, Nelson Co., Amherst Co., Campbell Co., Bedford Co.
25 th	Covington, Waynesboro, Lexington, Staunton, Buena Vista, Clifton Forge, Highland Co., Augusta Co., Rockbridge Co., Bath Co., Alleghany Co., Botetourt Co., Craig Co.
27 th	Galax, Radford, Pulaski Co., Wythe Co., Carroll Co., Montgomery Co., Floyd Co., Grayson Co.
28 th	Bristol, Washington Co., Smyth Co.
29 th	Giles Co., Bland Co., Tazewell Co., Buchanan Co., Russell Co., Dickenson Co.
30 th	Norton, Wise Co., Scott Co., Lee Co.
Region II: Fairfax Office	(703) 246-2495
13 th	Richmond City
14 th	Henrico Co.
15 th	Fredericksburg, Caroline Co., Essex Co., Hanover Co., King George Co., Lancaster Co., Northumberland Co., Richmond Co., Spotsylvania Co., Stafford Co., Westmoreland Co.
16 th	Charlottesville, Madison Co., Greene Co., Albemarle Co., Fluvanna Co., Goochland Co., Louisa Co., Orange Co., Culpeper Co.
17 th	Arlington (local), Falls Church (local)
18 th	Alexandria
19 th	Fairfax and Fairfax Co. (local)
20-L	Loudoun Co.
20 th	Fauquier Co., Rappahannock Co.
26 th	Harrisonburg, Winchester, Frederick Co., Clarke Co., Warren Co., Page Co., Shenandoah Co., Rockingham Co.
31 st	Manassas, Manassas Park, Prince William Co.
Region III: Hampton Office	(757) 727-6184
1 st	Chesapeake
2 nd	Virginia Beach
2-A	Accomack Co., Northampton Co.
3 rd	Portsmouth
4 th	Norfolk
5 th	Franklin, Suffolk, Isle of Wight Co., Southampton Co.

District	Localities Served
6 th	Emporia, Hopewell, Prince George Co., Surry Co., Sussex Co., Greensville Co., Brunswick Co.
7 th	Newport News
8 th	Hampton
9 th	Williamsburg, Poquoson, York Co., James City Co., King and Queen Co., King William Co., Gloucester Co., Mathews Co., Middlesex Co., Charles City Co., New Kent Co.
11 th	Petersburg, Amelia Co., Dinwiddie Co., Nottoway Co., Powhatan Co.
12 th	Colonial Heights, Chesterfield Co.

Community Funded Programs and Services for Non-State Wards

Funding is provided to local governments through the **Virginia Juvenile Community Crime Control Act (VJCCCA)** to design and implement services to meet the needs of troubled youth in their localities. With a plan approved by the Board of Juvenile Justice, localities may purchase or develop programs and services that are pre-dispositional, post-dispositional, diversionary, residential, or nonresidential. Programs and services vary by locality, but may include:

Less Secure Detention

These programs provide an intermediate residential placement between secure detention and group homes. Services may include residential care; group, family, and individual counseling; assessment and case management; life skills; recreation and educational support.

Group Homes

These programs provide residential placement in a non-secure environment. Services may include residential care; group, family, and individual counseling; assessment and anger management; life skills; recreation and educational support.



Family Oriented Group Homes

These programs provide a residential placement in a homelike foster care environment. Services may include residential care, group and individual counseling, assessment and case management, life skills, recreation, and educational support.

Crisis Intervention and Sheltercare

These programs provide short-term residential or nonresidential crisis care that focuses on stabilizing the youth's behavior, making an initial assessment of treatment needs, and planning for future (short-term and long-term) service needs with a goal of reunification with the family. Services may include case management, group counseling, individual counseling, tutoring, and interagency service referrals.

◆ II. JUVENILE JUSTICE IN VIRGINIA

Outreach Detention/Electronic Monitoring

This program assures the youth's availability for court, alleviates the overcrowding in detention homes, and allows the parents or guardians to have physical custody of their children while ensuring the public safety of the community. Services may include electronic monitoring, intensive supervision, and home confinement.

Supervision/Probation

This program helps to keep juveniles from engaging in further inappropriate or delinquent behavior as well as placement in a secure correctional facility by providing supervision to juveniles in the community on probation. Services may include individual and family counseling, case management, intensive supervision, monitoring and surveillance, in-home assessments, referrals, and drug testing.

Substance Abuse Assessment and Treatment Programs

These programs help clients become and remain drug and alcohol-free and avoid delinquent behavior and court involvement. Services may include substance abuse assessments, urinalysis, breathalyzer tests, case management, education, counseling, and intensive treatment (residential or nonresidential).

Sex Offender Assessment and Treatment Programs

These programs help ensure public safety through assessment and treatment of sex offenders. Services may include individual, family and group counseling; assessment; and residential placement.

Mental Health Assessment Programs

These programs provide the court with the necessary information about the youth's mental status to make an appropriate disposition and referral to other agencies.

Individual, Group, Family Counseling

This service helps meet the counseling needs of youth and their families. Services may include conflict resolution skills, improving communication skills between youth and parents/guardians, setting consequences and rewards, and developing positive living skills.

Home-Based, In-Home, or Family Preservation Services

These services prevent the removal of a youth from the home and deter youth from further involvement with the juvenile justice system by providing counseling and treatment to the youth and family within the home. Services may include family counseling, improvement of social relationships and problem solving, community coordination, educational and vocational support.

Mentoring

This program reduces recidivism and deters continued court involvement by providing a positive adult relationship and role model. Services may include reinforcing and coaching positive behavior, interpersonal skills training and coping mechanism usage.

Community Service

This program provides an option to courts and a sanction for delinquent behavior by providing community work experience programs.

Restitution/Restorative Justice

This program provides a sanction for delinquent behavior, compensation to victims, and teaches youth appreciation for consequences of their actions and how they may impact their victims' lives. Services may include restitution, mediation, family or community conference committees.

After School or Extended Day Programs

These programs reduce opportunities for youth to re-offend by providing structured activities during or after regular school hours (especially during high-risk hours of 3:00 p.m. to 7:00 p.m.) or during curfew periods. Services may include education and academic tutorial skills, vocational and occupational skills, GED preparation, correspondence courses, adult education, alternative school, recreation, social activities, counseling, crisis intervention, behavior management, and pre-employment skills.

Academic Improvement Programs

These programs reduce recidivism and deter continued court involvement by improving academic achievement. Services may include tutoring, study skills, GED preparation, correspondence courses, adult education, and alternative school placement.

Truancy Programs

These programs encourage juveniles to regularly attend school. Services may include case management, group counseling, individual counseling, tutoring, and interagency service referrals.

Employment/Vocational Programs

These programs prepare clients with basic employment skills and assist them in obtaining employment. Services may include vocational counseling, teaching job skills, on-site supervision/supported employment, pre-employment skills, coordination of transportation, and vocational assessment.

Shoplifting Programs

These programs educate participants on consequences of shoplifting. Services may include alternatives to delinquent behavior, problem-solving skills, education on shoplifting laws and consequences, and group discussion.

Law-Related Education

This program reduces recidivism with services that teach individual accountability and responsibility, understanding our legal system, rights, and responsibilities.

Anger Management Programs

These programs reduce recidivism with services that include anger management, group and individual counseling, educational groups, alternative conflict resolution skills, communication skills, and stress management techniques.

Parenting Skills Programs

These programs improve parenting skills of parents and caretakers of delinquent youth. Services may include education; individual, group, and family counseling; and support groups.

◆ II. JUVENILE JUSTICE IN VIRGINIA

Life Skills Programs

These programs provide opportunities for personal growth and taking responsibility. Services may include using public transportation, making and keeping appointments, grocery shopping and meal planning/preparation, laundry and home hygiene, preventing pregnancy, preventing STDS, preventing tobacco use, healthy communication, and adolescent parenting training.

Recreation and Wilderness Programs

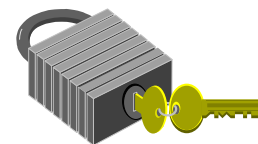
These programs reduce future delinquency through positive recreational activities. Services may include structured recreational activities, field trips, leisure counseling, and cultural activities.

Individual Purchase of Services

These services provide funding to purchase additional services to meet the greater individual needs of the child. Services may include residential, non-residential, and pre-dispositional/post-dispositional non-routine services.

Detention

Most secure detention programs are owned and operated by local governments or commissions. The Department of Juvenile Justice provides partial funding for construction and operations to twenty such programs. The only state-operated facility is located in Culpeper adjacent to Culpeper Juvenile Correctional Center. These physically secure, residential programs provide temporary care for delinquents and alleged delinquents who require secure custody pending court disposition or placement. These programs also may provide secure custody and services for post-dispositional delinquents who require a lesser period of confinement than commitment to a juvenile correctional center.



Educational instruction (including remedial services) is mandatory within 24 hours of a youth being detained and is provided by the locality in which the detention facility is located. Other program components include medical screening, recreational activities, religious activities, and parental or guardian visitation.

Services for State Wards: Juvenile Correctional Centers

The Department of Juvenile Justice operates eight correctional centers for juveniles committed to state care. These secure facilities provide programs to address the treatment, disciplinary, medical, and recreational needs of the juveniles.

Juvenile offenders are committed to the Department of Juvenile Justice (DJJ) by the Juvenile and Domestic Relations District Courts and Circuit Courts for rehabilitation and confinement. Delinquent behavior, criminal offense histories, and treatment histories make it impossible to place these juveniles in foster homes, non-secure facilities, or with their own families. DJJ provides direct care services to committed offenders through a Reception and Diagnostic Center (RDC) and seven residential juvenile correctional centers (JCCs) across the state.

Juvenile Correctional Centers	1999 Capacity
C. R. Minor Reception and Diagnostic Center	166
Barrett Juvenile Correctional Center	98
Beaumont Juvenile Correctional Center	322
Bon Air Juvenile Correctional Center	280
Culpeper Juvenile Correctional Center	112
Hanover Juvenile Correctional Center	154
Natural Bridge Juvenile Correction Center	71
Oak Ridge Juvenile Correctional Center	40
Total	1243

Reception and Diagnostic Center

The C.R. Minor Reception and Diagnostic Center is the intake point for all juveniles committed to the Department. The Center provides secure confinement for all juveniles for approximately 30 days while they are undergoing medical, academic, psychological, behavioral, and sociological evaluations to determine their treatment needs and appropriate institutional placements. From the Center, the juveniles may be admitted into one of the Department's juvenile correctional centers or assigned to alternative placements in private provider facilities.

Barrett Juvenile Correctional Center

The Barrett facility houses an intensive Substance Abuse Treatment Program. This program is the first of its kind in the nation to be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF). The treatment provided in conjunction with the Gateway Foundation is conducted in a Therapeutic Community model typically requiring a minimum of six months to complete. The Barrett facility population consists of chemically dependent wards of all ages with less serious committing offenses

Beaumont Juvenile Correctional Center

Beaumont houses the older, more aggressive male offenders, ages 16-21, in a close custody facility and a medium security facility. Specialized programs include a Sex Offender Treatment Program, Substance Abuse Treatment Program, and an Anger Management Program. A College Bound program and SAT Testing are offered by the Department of Correctional Education.

Bon Air Juvenile Correctional Center

The Bon Air facility is the only co-ed correctional center, housing both males and all females committed to the Department. The male offenders placed here are 15 to 16 years of age and have less serious committing offenses. The females are of all ages and offense levels. Specialized programs include a Substance Abuse Treatment Program and an Anger Management Program.

◆ II. JUVENILE JUSTICE IN VIRGINIA

Culpeper Juvenile Correctional Center

The Culpeper facility houses the older and most aggressive offenders, ages 16-21. The Department of Correctional Education offers College Bound and SAT Testing Programs.

Hanover Juvenile Correctional Center

Hanover houses male offenders of all ages with moderate to serious committing offenses. Specialized programs include JROTC, Anger Management, the Sex Offender Treatment Program, and the Substance Abuse Treatment Program.

Natural Bridge Juvenile Correctional Center

The Natural Bridge facility houses male offenders of all ages who are lower security risks with less serious committing offenses. However, the Department places a limited number of major and serious offenders at Natural Bridge as a step down or transition placement prior to release. Specialized programs include Substance Abuse Treatment, Anger Management, and Independent Living.

Oak Ridge Juvenile Correctional Center

The Oak Ridge facility houses male offenders with developmental disabilities and severe behavior disorders. The population has measured intelligence scores in the borderline to moderately retarded range. Offenders typically have an extensive history of maladaptive behavior and are committed for serious offenses. The facility operates a Behavioral “token economy” Program and offers Sex Offender and Substance Abuse Treatment programs.

Programs in Juvenile Correctional Centers

The correctional centers use a variety of specialized programs aimed at providing the juvenile a genuine opportunity for reform.

LEADER

The majority of the Department’s juvenile correctional centers use the Leadership, Education, Achievement, Discipline, Empowerment and Responsibility (LEADER) training program as their basic behavior management approach. This program provides a military-school-style structure designed to instill responsibility and self-discipline within the juveniles. Juveniles graduate from the Reception and Diagnostic Center as a cadet first class, and progress through various ranks at the juvenile correctional centers based on their behaviors and their levels of participation in service plan and treatment objectives. The program provides leadership opportunities and rewards positive achievement on both a group and individual level.

Youth Industries

In conjunction with the Department of Correctional Education, the Department of Juvenile Justice created Youth Industries, the state’s juvenile enterprise program. It provides youth with long-term commitments job skills training in areas such as Bindery Work, Culinary Art, Offset Duplicating Machine Operating, Silk-screening, Printing, Electrical Wiring and Horticulture. With the help of counselors, juveniles are afforded the opportunity to learn work ethics and demonstrate the benefits of gainful employment.

Transitional Services

The Department of Juvenile Justice has developed a statewide array of Community-based transitional services for offenders released from the juvenile correctional centers to assist the parole officers in facilitating a smooth transition from incarceration to community living.

The Department purchases services that provide for a positive community adjustment for the youth being released from a juvenile correctional center. A range of programs is offered including home-based counseling, independent living skills, substance abuse treatment, sex offender treatment, relapse prevention, educational services, and employability skills.

Parole

Upon release from the Department's correctional centers or private placement, offenders are provided parole services to assist in the transition back to the community. Parole officers are assigned to offenders to provide case management services, broker appropriate transitional services, and monitor the offenders' adjustments to the communities. Juveniles may receive family and individual counseling referral to other community services, vocational services, or specialized educational services. The Department also has 22 staff designated as intensive parole officers, who carry a reduced caseload in order to provide additional services and maintain frequent contact with their parolees.

LEADER will be expanded to include a parole component designed to support the philosophical tenants of LEADER and provide an appropriate and structured transition of cadets back to the community. The parole component will be broken down into phases with specific objectives to be accomplished at each phase. Woven through each phase will be LEADER components which will emphasize life skills, vocational and educational training, community service, and accountability and responsibility for successful transition. Military school style segments of LEADER, such as monthly formation, drill and ceremony, squad groupings and team task will also continue in the community. Parents and guardians will also be actively involved in parole and be held accountable for attending groups and setting expectations.

Halfway Houses

The Department operates three halfway houses and oversees the running of one privately-operated halfway house. These facilities are designed to provide transitional skills to juveniles leaving the Department's correctional centers. Each halfway house program is designed to take advantage of the unique resources available in its community to meet the needs of the residents. Upon completion of the program, the resident will have gained additional skills to promote a continued positive adjustment and reduce the risk of recidivism.

Private Provider Services

To supplement the number of Juvenile Correctional Center beds, \$10.3 million was allocated to the Department of Juvenile Justice to contract with private contractors to provide direct care community residential beds and treatment services for committed youth.

Tidewater Environmental Institute Associated Marine Institute

Associated Marine Institute operates the Tidewater Environmental Program located in Norfolk, VA. The 10-bed residential program for male offenders is housed aboard a former Naval CT- 11

◆ II. JUVENILE JUSTICE IN VIRGINIA

training vessel. Offenders may be referred directly from the Reception and Diagnostic Center (RDC) or be transitioned from a Juvenile Correctional Center. The average length of stay for offenders is six months. The program provides rehabilitative services in a highly structured and disciplined environment that emphasizes work, accountability and education. Program components include education and social skill development, structured environmental and conservation work projects and various treatment interventions. On-site education is provided for academics, special education, vocational instruction and GED preparation. Prior to release from the facility, transitional services are provided to assist the offender in locating a job, enrolling in an educational program or connecting to other community resources.

Kenbridge Youth Development School First Corrections Corporation

First Corrections Corporation provides services for Kenbridge Youth Development School, a fifty-bed secure residential treatment center located in the Town of Kenbridge, VA. The average length of stay for offenders ranges three to nine months. Services provided include anger management, individual, group and family counseling, substance abuse education and treatment, and independent living skills. The educational program includes academic instruction, vocational instruction, GED preparation and special education. The program also includes an in-house work program for selected offenders which teaches specific work skills, provides on-the-job training and an opportunity to earn an income.

Virginia Wilderness Institute Associated Marine Institute

The Virginia Wilderness Institute, located in Grundy, VA., is operated by the Associated Marine Institute. The program is a 32-bed residential wilderness-based program. The program for male offenders, emphasizes work ethics, education, values, self-discipline, responsibility, accountability and life skills through participation in rigorous work and community service. A forestry component is incorporated into the curriculum to include wildlife habitat improvement, maintenance of trails, campgrounds and buildings. On-site education is provided for academics, special education, vocational instruction and GED preparation. Other programs include independent living skills, computer skills and substance abuse education and treatment. Transitional services assist the offenders in a positive adjustment to community living to include locating employment and/or enrolling in an educational program.

Operation of Juvenile Justice in Virginia

Filing a Petition: What are the Requirements?

The first step in a court action against a juvenile offender is the filing of a complaint. A complaint or petition, if it is written on a standard legal form, is a formal written accusation filed in court charging that a certain person committed a specific offense. A petition is a document filed at court intake, alleging that a juvenile is delinquent, a child in need of services (CHINS), or an abused or neglected child and asking that the court assume jurisdiction over the juvenile. The intake officer has the authority to receive, review, and process complaints. Based on the information gathered, a determination is made whether a petition should be filed with the juvenile court or handled at intake.

Many individuals may file a petition, including administrators of school divisions, parents, citizens, the victim, intake officers or law-enforcement officers who believe a juvenile has committed a crime. The person making the complaint is required to sign the petition. The **Code of Virginia** (§§16.1-260 and 16.1-262) specifies the circumstances under which petitions must be filed, their form and content. The petition must contain the following items:

- ♦ A statement of name, age, date of birth and residence of the juvenile.
- ♦ A statement of the names and residences of the juvenile's parents, guardian, legal custodian or other person standing in the place of the parent and spouse, if any.
- ♦ A statement of the names of the juvenile's nearest known relatives, if no parent can be found.
- ♦ A statement of the specific facts which allegedly bring the child within the authority of the law. If the petition alleges that the juvenile committed a delinquent act, the petition must make reference to the applicable sections of the **Code** which designate the juvenile's act a crime.
- ♦ A statement as to whether the juvenile is in custody and if so, the place of detention or shelter care and the time the juvenile was taken into custody.
- ♦ When a juvenile allegedly commits an alcohol-related offense, the matter may be handled through other means (i.e. uniform summons) provided that he or she is released to the custody of a parent or legal guardian prior to the initial court date.

What Happens to a Juvenile After the Complaint is Filed?

After an investigation, the intake officer determines whether a petition will be filed. If there is no probable cause to believe the offense occurred, then no petition is filed. If there is cause to believe an offense has occurred, it may be handled in a variety of ways. If it is a minor offense, the matter may be handled at the intake level without formal court action. In some cases the juvenile may be required to complete a diversion program such as community service, counseling, or a substance abuse education group. If the alleged offense is serious or if the intake officer determines that formal court intervention is warranted then a petition will be filed.

◆ II. JUVENILE JUSTICE IN VIRGINIA

The Juvenile Justice Process

Steps in the Juvenile Justice process in Virginia are depicted in the diagram on the following page. An explanation of each step is given below:

1 The juvenile enters the system when a delinquent or status offense is reported, typically by police, victims, parents or other agencies, to an intake officer at the Court Service Unit (CSU).

2 An intake officer has discretionary power to divert some cases from the judicial process, depending on the offense and the circumstances.

3 If the juvenile is diverted from the judicial process, he or she might receive “Unofficial Services,” such as individual or family counseling, or be required to perform community services or attend other diversion programs.

4 If the case is forwarded to court, the intake officer must determine if the juvenile should be detained (based on the nature of the offense, the juvenile’s risk to the community or self, and risk of running away) or remanded to his/her parents either on bond or recognizance.

5 In the case of detention, a hearing is held by the Juvenile and Domestic Relations District Court on the next day the court sits but in no case later than 72 hours to determine if further detention is necessary. From detention or parental custody, the juvenile goes to court for adjudication.

6 At the adjudicatory hearing, innocence or guilt is determined. If the juvenile is found guilty, a social investigation is typically ordered prior to final disposition. This investigation examines the background of the juvenile including any prior court history, contacts with other agencies, educational background and school performance, and family history. The report typically includes recommendations to the court regarding most appropriate dispositional sanctions and services for the juvenile and the family.

7 At disposition, the juvenile may receive:

- warnings or reprimands; or
- fines; or
- a short-term sentence to detention.

8 conditional dispositions such as 1) probation, 2) participation in CSU programs, 3) referral to local services or facilities, 4) referral to other agencies, 5) private placement (through the Comprehensive Services Act), or 6) boot camp placement; or

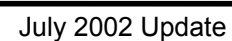
9 custodial commitment to state care (Department of Juvenile Justice). State care includes an initial evaluation at the Reception and Diagnostic Center (RDC) and placement at one of the six correctional centers. RDC conducts psychological, educational, social and medical evaluations for committed youth.

10 From RDC, the juvenile may go to a boot camp, a privately operated residential facility, or a Juvenile Correctional Center. At the Juvenile Correctional Centers, committed juveniles receive 24-hour supervision, education, treatment services, recreational services, and a variety of special programs.

11 The juvenile may be placed on parole upon successful completion of the Juvenile Correctional Center commitment period. During parole the juvenile transitions to the community through program efforts by the Department of Juvenile Justice, and is afforded local services. While on parole and returning to the community, some juveniles may need the 24-hour residential care and treatment services supplied by the one private and three state-run halfway houses. Upon successful completion or expiration of parole, the youth is discharged from the system.



Virginia's Juvenile Justice System



Department of Correctional Education

General Overview

The Virginia Department of Correctional Education (DCE) is an independent state agency that operates its own school district serving both incarcerated youth and adults. For incarcerated adults, DCE operates schools in 26 correctional centers, 14 correctional field units, 2 reception centers, 1 boot camp, 5 detention centers, 5 diversion centers, and 9 day reporting centers. For incarcerated youth, DCE operates 9 schools. DCE employs 781 full time staff, more than 80% of which are directly involved in instruction. All academic and vocational teachers and principals must meet the certification and endorsement standards established by the Virginia Department of Education to the same extent as all other public school teachers and principals.

Juvenile Education

DCE provides elementary, middle, and secondary level academic instruction in accordance with the *Standards of Learning* established for public schools by the Department of Education (DOE). It also provides special education, social skills instruction, transitioning skills, GED, and vocational instruction in 19 different trade areas. It should be noted that vocational programs are modeled on those taught in Virginia's public schools and approved by DOE. SAT college preparation tests are administered to those students who wish to apply for colleges and universities.



All youth are tested upon intake in order to evaluate their educational competency. A large number of youth require special education services. The actual number varies because of the turnover of students; however, the last study identified thirty-nine (42%) as requiring such services.

Juvenile Programs

The Department of Correctional Education offers a variety of programs for juveniles, including academic education/high school diploma/GED, vocational/technical education, pre-apprenticeship and apprenticeship programs, social skills training, special education, SAT/College preparation, job employment skills training, and library services.

The mission of the Department of Correctional Education is to provide quality educational programs that enable incarcerated youth and adults to become responsible, productive, tax-paying members of their communities.

◆ II. JUVENILE JUSTICE IN VIRGINIA

School Re-Enrollment Plan

§16.1-293

Source: VA. Dept. of Education, SUPTS. MEMO NO. 2, January 17, 1997

HB 936 of the 1996 General Assembly established the requirement that a *re-enrollment plan* be developed for all students of compulsory attendance age or students with disabilities who have been identified as eligible for special education services who are committed to the Department of Juvenile Justice. In accordance with the Act, the Departments of Juvenile Justice (DJJ), Education (DOE) and Correctional Education (DCE) have collaborated to establish the following procedures for development of the juvenile *School Re-Enrollment Plan*. An individualized *School Re-Enrollment Plan* shall be developed as follows:

Section I - Detention Information &

Section II - Local School Division Information

Development of the plan shall be initiated by the probation officer assigned to the case at the time of commitment to the Department of Juvenile Justice (or social worker if assigned as supervising agent)¹ The probation officer shall complete Sections I and II (page 1) of the *School Re-Enrollment Plan* and forward it to the court-school liaison in the local school division where the juvenile was last enrolled. A cover letter, requesting the juvenile's scholastic records and immunization records be forwarded to the DJJ Reception and Diagnostic Center (RDC) within five days of receipt, shall accompany the form. The parole officer shall also send Sections I and II and a request form to the detention home or other facility where the juvenile may have been held so that educational records generated while the juvenile was detained can be forwarded. The *School Re-Enrollment Plan* shall be initiated within 48 hours of the juvenile's commitment. A copy of Sections I and II of the *School Re-Enrollment Plan* shall be forwarded by the probation officer to RDC with the commitment packet.

If a local school division has indicated that the student was not enrolled and identifies the public or private school where the student was enrolled, the probation officer should attempt to contact that school so that the education information requested in Section III is completed.

Section III - Student's Education Status at Commitment

The local school division shall complete Section III (page 2) of the *School Re-Enrollment Plan* that provides information about the juvenile's educational status at the time of commitment. The court-school liaison who received the information from the probation officer shall be responsible for ensuring the completion of Section III and forwarding the form to RDC within five days of receipt.

School divisions shall also send the scholastic record, including an Individualized Education Program (IEP), special education eligibility minutes, literacy development plan (if applicable), and immunization records to RDC within five days. (NOTE: Failure to send immunization records may result in unnecessary re-immunization of the juvenile at RDC).

¹ If the local Department of Social Services is designated as the supervising agent by the Judge at the time of commitment, then the social worker will be responsible for all duties assigned to the probation or parole officer.

Section IV - Reception and Diagnostic Center Information

The RDC staffing team shall be responsible for recommending the appropriate educational program for the juvenile during his/her stay in direct care. The education specialist at RDC shall complete Section IV (page 3) of the *School Re-Enrollment Plan* at the conclusion of the staffing meeting. The original form (Sections I, II, III, & IV) shall be forwarded to the DCE school (with the educational packet) at the juvenile correctional center (JCC) where the juvenile is placed. A copy of Section III and IV (pages 3 & 4) shall be included in the evaluation packet that is sent to the court service unit, and shall be copied to the master and transfer files. The parole officer shall forward a copy of Section IV (pages 3 & 4) of the *School Re-Enrollment Plan* to the local school division contact. This will provide information about the juvenile correctional center placement and the projected release date to the local school division.

Section V - Juvenile Correctional Center Education Program

The DCE designee shall collaborate with the JCC Treatment Team to determine education services to be provided to the juvenile during his/her commitment. The DCE designee shall then complete Section V-A (page 4) of the *School Re-Enrollment Plan* and forward it to the JCC counselor within 30 days of arrival at the facility. A copy of this page shall also be sent to the parole officer. The DCE principal or designee shall monitor and document the services provided by recording dates when the education information is sent, Section V-B (page 4) of the *School Re-Enrollment Plan*, and forwarding those scholastic records to the JCC counselor and parents as indicated. These reports will include IEP information, grade sheets and GED results. The JCC counselor will forward copies of these scholastic records to the parole officer. These may be included with bi-monthly progress reports. The parole officer will share the information with the parents at their monthly meetings. Any changes to the educational plan shall be coordinated through the JCC Treatment Team.

The JCC counselor shall notify DCE of the juvenile's projected release date 30 days prior to the scheduled date. The DCE principal or designee shall complete Section V-C (page 4) of the *School Re-Enrollment Plan* with recommendations for re-enrolling in public school. The DCE principal or designee shall forward this section to the parole officer with a copy to the juvenile correctional center counselor within five days.

Section VI - Notification to School Division of the Student's Scheduled Release

The parole officer completes Section VI (page 5) of the *School Re-Enrollment Plan* and forwards this to the school division where the juvenile is scheduled to live following release. In addition to Section VI (page 5) a copy of all scholastic records received during commitment including Section V-C, Recommendations by DCE for Re-Enrollment will be sent to the school division. This must be completed at least 14 days prior to release (§16.1-293).

The final *School Re-Enrollment Plan* is initiated at this time. The parole officer, the designated school division contact, the DCE designee and the JCC counselor shall collaborate using the information collected and shared throughout the process to determine the most appropriate educational placement for the juvenile. The school division shall notify the parole officer immediately if the juvenile is not a resident.

◆ II. JUVENILE JUSTICE IN VIRGINIA

Section VII - Establishment of School Placement Upon Release

The local school division completes Section VII (page 5) of the *School Re-Enrollment Plan* and forwards it to the parole officer and the DCE principal within 5 days of receipt. The DCE principal or designee prepares the final transcript and sends it to the local school division contact identified in Section VII within 5 days of discharge (§22.1-289E).

The local school superintendent is final authority on the student's public school enrollment, placement, and re-enrollment after expulsion.

If the local school division has indicated that the student is not eligible to enroll due to expulsion or long-term suspension, the parole officer should begin efforts to pursue other educational opportunities for the child. If the local school division indicates that the student cannot enroll because the student is not considered a resident based on the living arrangements identified by the parole officer, the parole officer should contact the appropriate school division, and provide that division with all of the information gathered on the *School Re-Enrollment Plan* form.

If a youth will be released to a halfway house in a jurisdiction other than where the parole officer is located, the halfway house representative shall be responsible for completing a *School Re-Enrollment Plan* if the juvenile is to return to an educational placement.



Related Reading

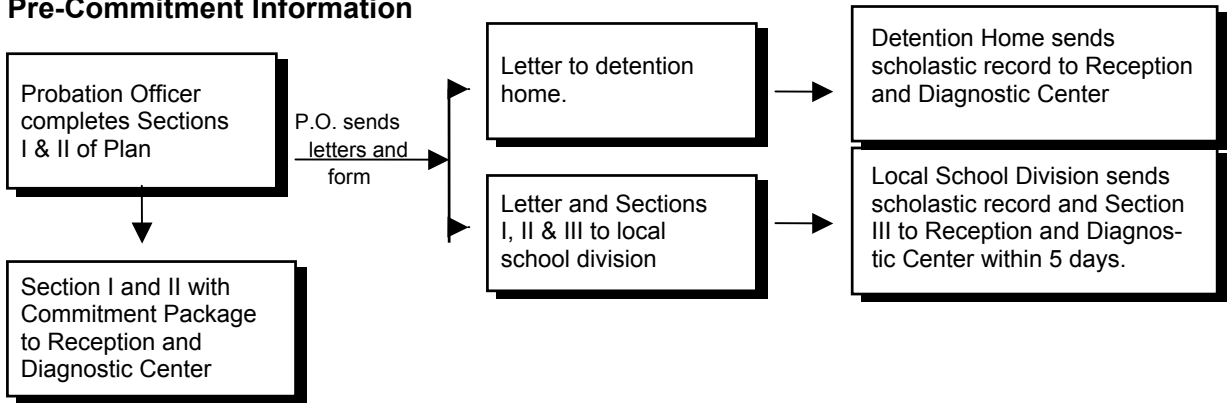
Update

Virginia Department of Correctional Education Website. Available at:
www.dce.state.va.us

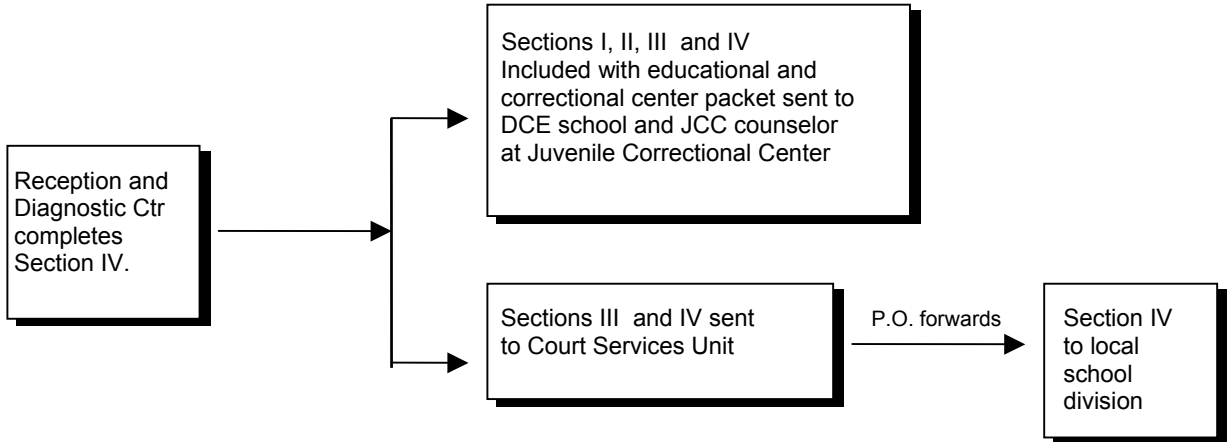
VA. Dept. of Education, **SUPTS. MEMO NO. 2, January 17, 1997.** Available online at www.pen.k12.va.us/

School Re-Enrollment Plan

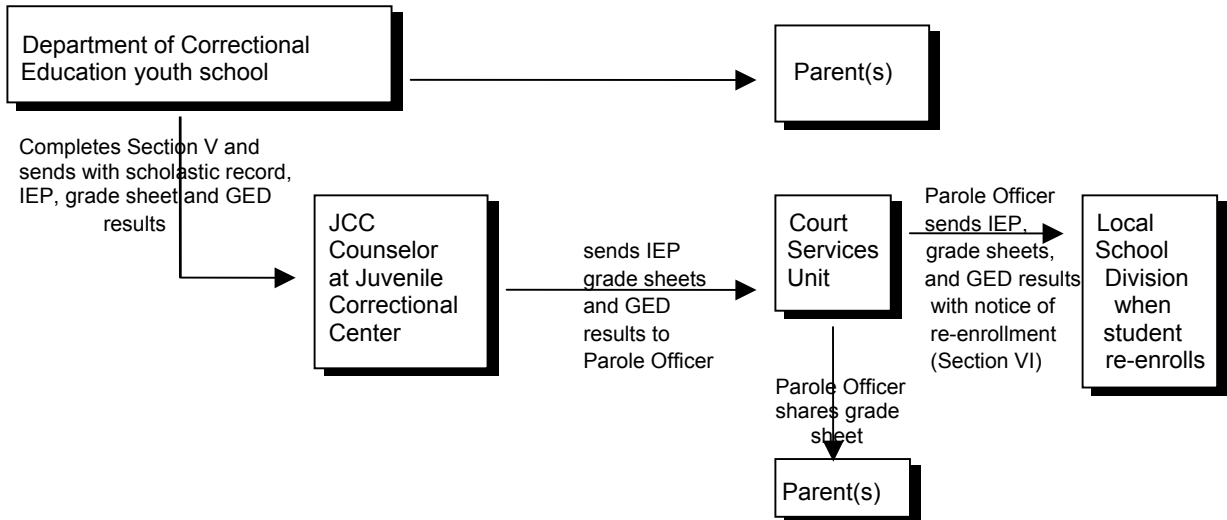
Sections I, II and III Pre-Commitment Information



Section IV Information at Reception and Diagnostic Center



Section V Information During Commitment



School, Law Enforcement, and Court Relationships

Education in Virginia

The Virginia Constitution: Article VIII—Education

The General Assembly's Responsibility

The framework for Virginia's system of public education is set forth in Article VIII of the Constitution of Virginia. Section 1 makes the General Assembly responsible for the public elementary and secondary educational system.

- ◆ "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained." (§1)

The State Board of Education's Responsibility

Responsibilities of the Board of Education are set forth in Sections 2, 4, and 5.

- ◆ "Standards of quality for the several school divisions shall be determined and prescribed...by the Board of Education, subject to revision only by the General Assembly." (§2)
- ◆ "General supervision of the public school system shall be vested in a Board of Education." (§4)
- ◆ "Subject to the ultimate authority of the General Assembly, the Board shall have primary responsibility and authority for effecting the educational policy set forth in this Article." (§5)
- ◆

The Superintendent of Public Instruction

Section 6 establishes the position of the Superintendent of Public Instruction who is appointed by the governor, with confirmation of the General Assembly, to serve the same term as the governor. The Superintendent's duties and powers are prescribed by state law.

Local School Boards' Responsibilities

Section 7 vests the supervision of schools in each school division in a local school board. The General Assembly retains the authority, however, to decide the method for selecting school board members, the number of members, and the qualifications for membership.

- ♦ “The supervision of schools in each school division shall be vested in a school board.” (§7)
- ♦ “To see that schools laws are properly explained, enforced and observed.” (§22.1-79)
- ♦ “Adopt regulations for the supervision of schools, including proper discipline of students, including their conduct going to and returning from school.” (§22.1-79)
- ♦ “Insofar as not inconsistent with state statutes and regulations of the Board of Education, operate and maintain the public schools in the school divisions and determine the length of the school term, the studies to be pursued, the methods of teaching and the government to be employed in the schools.” (§22.1-79)

Shared Responsibility in Education

Compulsory student attendance and student discipline are two areas in which the General Assembly, Virginia Board of Education, and local boards of education share responsibility. The legal authority and responsibilities of each entity are depicted in the table on the following page.

Two Examples of Shared Responsibility

Entity	Attendance	Discipline
General Assembly	<p>Sets compulsory school attendance requirements including rules for alternative instruction and exemptions. (§22.1-254 et seq.)</p> <p>Specifies procedures for filing a complaint in court when parents fail to comply with laws regarding enrollment and absenteeism.</p>	<p>Establishes standards for pupil suspension and expulsion, addressing basic due process procedures. (§22.1-277)</p> <p>Codifies federal law regarding expulsion for bringing a firearm on school property (§22.1-277.01) (Gun-Free Schools Act of 1994) Specifies information that shall be addressed in Board of Education guidelines and local school board student conduct policies.</p> <p>Requires notification to parents and students.</p>
State Board of Education	<p>Authorized to ensure that provisions of the compulsory school attendance law are enforced throughout the Commonwealth. It also does the following:</p> <p>Establishes funding regulations based on attendance figures.</p> <p>Provides technical assistance through the Department of Education.</p> <p>Gathers data regarding attendance as part of Outcome Accountability Project.</p>	<p>Establishes guidelines and model student conduct policies.</p>
Local School Boards	<p>Establish proceedings for compliance with compulsory school attendance.</p> <p>Establish policy regarding absenteeism, course grades and grade retention.</p> <p>Notifies parents and students of policies.</p>	<p>Adopts regulations for the supervision of schools, including proper school discipline of students and their conduct going to and returning from school. (§22.1-78).</p> <p>Notifies parents and students of policies.</p>

Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article. §22.1-254.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and
2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. A school board may excuse from attendance at school:

1. On recommendation of the principal and the division superintendent and with the written consent of the parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school; and
2. On recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

D. Local school boards may allow the requirements of subsection A of this section to be met under the following conditions:

For a student who is at least sixteen years of age, there shall be a meeting of the student, the student's parents, and the principal or his designee of the school in which the student is enrolled in which an individual student alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which plan must include:

- a. Career guidance counseling;
- b. Mandatory enrollment and attendance in a general educational development (GED) preparatory program or other alternative education program approved by the local school board with attendance requirements that provide for reporting of student attendance by the chief administrator of such GED preparatory program or approved alternative education program to such principal or his designee;
- c. Counseling on the economic impact of failing to complete high school; and
- d. Procedures for reenrollment to comply with the requirements of subsection A of this section.

◆ II. JUVENILE JUSTICE IN VIRGINIA

A student for whom an individual student alternative education plan has been granted pursuant to this subsection and who fails to comply with the conditions of such plan shall be deemed to be in violation of subsection A of this section.

Students enrolled with an individual student alternative education plan shall be counted in the average daily membership of the school division.

E. A school board may, in accordance with the procedures set forth in §22.1-277 and upon a finding that a school-age child has (i) committed an offense in violation of school board policies, (ii) been charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person, or (iii) been expelled from school attendance pursuant to §22.1-277.01, require the child to attend an alternative education program as provided in §22.1-209.1:2 or §22.1-277.1.

F. Whenever a court orders any pupil into an alternative education program offered in the public schools, the local school board of the school division in which the program is offered shall determine the appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its school division.

The juvenile and domestic relations district court of the county or city in which a pupil resides or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other education program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§22.1-277, 22.1-277.01, and 22.1-277.2. As used in this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

Update School-Based Probation

Establishing partnerships between juvenile probation departments and schools is another innovative approach to effective intervention with young offenders, including juveniles on probation and, in jurisdictions where probation departments also serve youth returning from incarceration, juveniles on parole. The uniting of schools and probation departments has been successful in communities and counties across the United States.

Educators and juvenile probation officers share a common goal: helping young people acquire knowledge and develop skills that lead to positive and productive lifestyles. As officials of the juvenile court, school-based probation officers provide control, supervision, and incentives that delinquent youth often need to attend school regularly and comply with school rules and regulations. School-based probation officers can also intervene in crisis situations involving juvenile probation clients and can assist schools in handling disruptive behavior by clients. Schools can contribute to probation objectives by providing student probationers with a structured environment for learning basic life skills and by designing an academic program tailored to the juvenile's individual needs.

School-based probation officers may perform a variety of specific functions:

- Notifying the school of a student's conditions of probation or parole and any special educational or therapeutic needs that should be addressed through school programming.
- Monitoring the attendance, school performance, and behavior of youth on probation or parole or undergoing informal behavioral adjustment.
- Conducting home visits and coordinating intervention services that must be obtained for students and families from sources outside the school system.
- Coordinating reentry conferences for students returning to school following placement in a juvenile justice facility.
- Providing services to minors who are not wards of the State but were referred to probation for a variety of reasons (including minor offenses, school discipline and behavior problems, and family difficulties).



Related Reading

Update

"From Courthouse to Schoolhouse" by Ronald D. Stephens and June Lane Arnette. In **Juvenile Justice Bulletin**, Office of Juvenile Justice and Delinquency Prevention. (February 2000). Available Online at http://www.ncjrs.org/html/ojjdp/jjbul2000_02_1/contents.html.

◆ II. JUVENILE JUSTICE IN VIRGINIA

When Educators Must Call Law-Enforcement Authorities

It is mandatory that the school involve law enforcement when a student's conduct violates a criminal provision of the **Code of Virginia**. The Virginia Department of Education recommends that school and law-enforcement officials, as partners in school safety, work together to determine the best procedures for referrals. The **Code of Virginia**, §22.1-279.3:1 (A) lists certain incidents which school officials **must report** to local law-enforcement agencies. §22.1-279.3:1 (A) does not, however, include all serious offenses which may occur at school; other incidents may also need to be reported as determined by local school board authorities and law-enforcement agencies. Offenses listed in §22.1-279.3:1 (A), **Code of Virginia**, are as follows:

- (i) the assault, assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a school bus, on school property, or at a school-sponsored activity;
- Update** (ii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, ***including the theft or attempted theft of student prescription medications***;
- (iii) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity; or
- (iv) the illegal carrying of a firearm onto school property.
- Update** (v) ***any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in §18.2-85, or explosive or incendiary devices, as defined in §18.2-433.1, or chemical bombs, as described in §18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; or***
- (vi) ***any threats or false threats to bomb, as described in §18.2-83, made against school personnel or involving school property or school buses.***

Where the conduct of the student is not illegal, school administrators may use their discretionary authority to take appropriate disciplinary action and to provide needed student support services in accordance with the student's problems.



Related Reading

"Effective Data Collection for Safe Public Schools: Exemplary Practices." (September 1996). In ***Creating Safe and Drug-Free Schools: An Action Guide***. Available online at <http://www.ed.gov/offices/OESE/SDFS/>

Update Virginia Department of Education (2001). ***Student Conduct Policy Guidelines***. Virginia

Department of Education, SUPTS. MEMO No. 97, June 22, 2001.

All SUPTS. MEMOS are available online at <http://www.pen.k12.va.us/>

School Resource Officers

School Resource Officers (SRO) are sworn law-enforcement officers who are assigned to work in schools. It is estimated that there are over 300 SROs in Virginia. The roles of the School Resource Officer (SRO) in Virginia are identified as

1. Law enforcement officer,
2. Law-related educator,
3. Community liaison, and
4. Role model

Update

Effective July 1, 2002 – §18.2-57. Definition of School Resource Officer.

A school resource officer is defined as a trained, certified law-enforcement officer hired by a local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools and a school security officer as an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining and apprehending students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

The measure also directs the Department of Criminal Justice Services, in consultation with the Department of Education and the Virginia State Crime Commission, to establish compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers; the training and certification will be administered by the Virginia Center for School Safety. School security officers are precluded from appointment as conservators of the peace and as special police officers. A second enactment clause provides that the training and employment standards will be applicable to persons employed as school security officers on and after September 15, 2003.

Funding:

In 1999 the Virginia General Assembly established a SRO Grants Program to award matching grants to local law-enforcement agencies and local school boards that have established a collaborative agreement to employ uniformed school resource officers in middle and high schools within the relevant school division.

§9-171.1. School Resource Officer Grants Program and Fund.

A. From such funds as may be appropriated for such purpose and from such gifts, donations, grants, bequests, and other funds as may be received on its behalf, there is hereby established the School Resource Officer Grants Program, to be administered by the Criminal Justice Services Board, in consultation with the Board of Education, and a special nonreverting fund within the state treasury known as the School Resource Officer Incentive Grants Fund, hereinafter known as the "Fund." The Fund shall be established on the books of the Comptroller, and any moneys remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

◆ II. JUVENILE JUSTICE IN VIRGINIA

Subject to the authority of the Criminal Justice Services Board to provide for its disbursement, the Fund shall be disbursed to award matching grants to local law-enforcement agencies and local school boards that have established a collaborative agreement to employ uniformed school resource officers in middle and high schools within the relevant school division. ***Update*** ***The Board may disburse annually up to five percent of the Fund for the training of the school resource officers.*** Such school resource officers shall be certified law-enforcement officers and shall be employed to help ensure safety and to prevent truancy and violence in schools.

B. The Criminal Justice Services Board shall establish criteria for making grants from the Fund, including procedures for determining the amount of a grant and the required local match. Any grant of general funds shall be matched by the locality on the basis of the composite index of local ability to pay. The Criminal Justice Services Board may issue guidelines governing the Program and the employment and duties of the school resource officers as it deems necessary and appropriate.

For additional information about School Resource Officers, contact the Virginia Department of Criminal Justice Services, Crime Prevention Center.



Related Reading

Update

Information about the Virginia School Resource Officer Program is available from the **Virginia Center for School Safety** at www.vaschoolsafety.com/sro/index.htm

Also available at the site:

Virginia SRO Program Guide.

Evaluation of Grant-Funded School Resource Officer Programs.

Virginia Model SRO Program

SRO Facts Book

School Security Officers



According to §9.1-101. Definitions.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

The Virginia General in its 2002 Session commissioned the Department of Criminal Justice Services to do the following:

Establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall be administered by the Virginia Center for School Safety pursuant to §9.1-184. Such training standards shall include, but shall not be limited to, the role and responsibility of school security officers, relevant state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics. The Department shall establish an advisory committee consisting of local school board representatives, principals, superintendents, and school security personnel to assist in the development of these standards and certification requirements. (§9.1-102)

Effective July 1, 2002, no person employed by a local school board as a school security officer, as defined in §9.1-101, shall be eligible for appointment as a special police officer for purposes of maintaining safety in a public school in the Commonwealth. (§15.2-1737A)

Additionally, effective July 1, 2002, no person employed by a local school board as a school security officer, as defined in §9.1-101, shall be eligible for appointment as a conservator for purposes of maintaining safety in a public school in the Commonwealth. (§19.2-13A)



Related Reading

Virginia Center for School Safety website: www.vaschoolsafety.com

◆ II. JUVENILE JUSTICE IN VIRGINIA

Tips for Testifying in Court

1. **Be prepared.** Try to recall what happened and picture the scene and the objects there. Do not try to memorize your testimony. Simply state what happened in your own words.
2. **Dress appropriately.** Neat, clean, conservative and comfortable clothes are suggested.
3. **Always tell the truth.** Tell exactly what you recall and what you know. If you do not know the answer, say "I don't know." **DO NOT GUESS OR SPECULATE.**
4. **Listen carefully to the question you are asked.** Take your time and think about your answer. If you do not understand a question, ask to have it rephrased or repeated.
5. **Speak clearly and address your answers to the judge or the jury hearing the case.** They are naturally interested in what you have to say.
6. **Answer only the questions asked and then stop.** Respond as clearly and completely as you can to questions. However, answer only the questions being asked. If the question requires a "yes" or "no" answer, answer "yes" or "no" unless your answer cannot be fully understood without an explanation.
7. **Be polite, firm, and clear in your answers.** Strive to maintain composure even if questions seem hostile.
8. Stop talking if an objection is made by one of the attorneys or if the judge interrupts. You will be told if you can finish your answer by the judge or one of the attorneys. If you have forgotten the question, ask to have it repeated.
- Update** 9. If you are asked whether you have talked about the case with anyone, answer truthfully. As a victim you probably have spoken to the police, the prosecutor, family and friends. The court is interested in what you know and how you know it.
10. **Be quiet in and around the courtroom.** Talking about the case around jurors or other witnesses may cause a mistrial.

Adapted from: ***An Information Guide to Virginia's Crime Victim and Witness Rights Act.*** Virginia Department of Criminal Justice Services, Victims Services Section, March 1997.



Related Reading

Update

"Going to Court: An Activity Book for Children." Available Online at:
<http://info.dcjs.state.va.us/sections/victimsservices/documents/>

Instructions for Witnesses

Used with permission of the American Bar Association, Committee on Continuing Professional Education.

- ♦ **If you are a witness to or a party involved in any incident that transpires at school that you believe will result in your appearing in court, you should immediately make yourself a memo setting forth as many details as you can remember, i.e. date, time, location of incident, witnesses, statements overheard, actions of parties observed.**
- ♦ You, as a witness in a lawsuit, have a very important job to do, since, in order for a judge or jury to make a correct and wise decision, they must have all of the evidence put before them truthfully.
- ♦ You already know that you take an oath in court to tell nothing but the truth. But there are two ways to tell the truth: one is in a halting, stumbling, hesitant manner which makes the judge or jury doubt that you are telling all of the facts in a truthful way; the other is confident and straightforward, which makes the judge and jury have more faith in what you are saying. You help yourself, the party you are testifying for, the judge and jury by giving your testimony in this last way.
- ♦ To assist you, here is a list of time-proven hints and aids which, if followed, will make your testimony much more effective.

Suggestions To A Witness

1. Before you testify, visit a court and listen to other witnesses. This will make you familiar with a court, and may help you to understand what will happen when you give your testimony.
2. Wear clean clothes to court. Dress conservatively.
3. Do not chew gum while testifying or taking the oath.
4. Stand upright when taking the oath. Pay attention and say "I do" clearly.
5. Don't memorize what you are going to say.
6. Be serious at all times. Avoid laughing and talking about the case in the halls, restrooms, or any place in the courthouse.
7. Talk to the judge or members of the jury. Look at them most of the time and speak to them frankly and openly as you would to any friend or neighbor. Do not cover your mouth with your hand. Speak clearly and loudly enough so that the farthest juror can hear you easily.
8. Listen carefully to the questions asked of you. No matter how nice the other attorney may seem on cross-examination, he may be trying to hurt you as a witness. Have it repeated if necessary; then give a thoughtful, considered answer. Do not offer a snap answer without thinking. You can't be rushed into answering, although, of course, it would look bad to take so much time on each question that the jury would think you were making up an answer.
9. Explain your answers if necessary. This is better than a simple "Yes" or "No." Give an answer in your own words. If a question can't be truthfully answered with a "Yes" or "No," you have a right to explain your answer.
10. Answer directly and imply only the question asked, and then stop. Do not volunteer information not actually asked.
11. If your answer was wrong, correct it immediately.
12. If your answer was not clear, clarify it immediately.
13. The court and jury only want facts: not hearsay, or your conclusions or opinions. You usually can't testify about what someone else told you.
14. Don't say, "That's all of the conversation," or "Nothing else happened." Say instead, "That's all I recall," or "That's all I remember happening." It may be that after more thought or another question you will remember something important.
15. Be polite always, even to the other attorney.
16. Don't be a smart aleck or a cocky witness. This will lose you the respect of the judge and jury.
17. You are sworn to tell the truth. Tell it. Every material truth should be readily admitted, even if it is not to the advantage of the party for whom you testify. Do not stop to figure

II. JUVENILE JUSTICE IN VIRGINIA ♦

out whether your answer will help or hurt your side. Just answer the questions to the best of your memory.

18. Don't try to think back to what was said in a statement you made. When a question is asked, visualize what you actually saw and answer from that. The jury may think a witness is lying if his story seems too "pat" or memorized, or if he answers several questions in the same language.
19. Do not exaggerate.
20. Stop instantly when the judge interrupts you, or when the other attorney objects to what you say. Do not try to sneak your answer in.
21. Give positive, definite answers when at all possible. Avoid saying "I think" or "I believe" or "In my opinion." If you do not know, say so; don't make up an answer. You can be positive about the important things that you naturally would remember. If asked about little details that a person naturally would not remember, it is best to just say that you don't remember. But don't let the cross-examiner get you in the trap of answering question after question with "I don't know."
22. Don't act nervous. Avoid mannerisms which will make the jury think you are scared, or not telling the truth or all you know.
23. Above all – this is most important – do not lose your temper. Testifying for a length of time is tiring. It causes fatigue. You will recognize fatigue by certain symptoms: (a) tiredness, (b) crossness, (c) nervousness, (d) anger, (e) careless answers, and (f) the willingness to say anything or answer any questions in order to leave the witness stand. When you feel these symptoms, recognize them and strive to overcome fatigue. Remember that the attorneys on cross-examination will try to wear you out until you will lose your temper and say things that are incorrect or that will hurt you or your testimony. Do not let this happen.
24. If you do not want to answer a question, do not ask the judge whether you must answer it. If it is an improper question, your attorney will take it up with the judge for you. Don't ask the judge for advice.
25. Don't look at your attorney or at the judge for help in answering a question. You are on your own. If the question is improper, your attorney will object. If the judge then says to answer it, do so.
26. Do not "hedge" or argue with the other attorney.
27. Do not nod your head for a "Yes" or "No" answer. Speak out clearly. The court reporter must hear.
28. If the answer is about distances or time and your answer is only an estimate, be sure that you say it is only an estimate. Be sure to think about speeds, distances, and intervals of time before testifying, and discuss the matter with your attorney so that your memory is reasonable.
29. When you leave the witness stand after testifying, wear a confident expression, not a downcast one.
30. There are several questions that are known as "trick questions." If you answer them the way the other attorney hopes you will, he can make your answer sound bad to the jury. Here are two of them:
 - (a) "Have you talked to anybody about this case?" If you say "No," the jury knows that is not right because good lawyers always talk to a witness before then testify. If you say "Yes," the lawyer may try to infer that you were told what to say. The best thing to do is to say very frankly that you talked with whomever you have -- the lawyer, police, etc. -- and that you were just asked what the facts were. All you do is tell the truth.
 - (b) "Are you getting paid to testify in this case?" The lawyer asking this hopes your answer will be "Yes," thereby inferring that you are being paid to say what your side wants. Your answer should be something like: "No, I am not getting paid to testify. I am only getting compensation for my time off from work and the expense (if any) it is costing me."

Go back, now, and reread these suggestions so that you will have them firmly in your mind.



◆ II. JUVENILE JUSTICE IN VIRGINIA

III. OFFENSES

According to the May 1994 *School Safety Update* article “Campus Crimes: Calling Them What They Are,”

“administrators need to know what activities are criminal in nature and distinguish between those activities and childish behaviors that are simply a part of growing up. . . Each school should have a partnership relationship with local law enforcement that includes an understanding of what crimes the police will be called to handle. Administrators should be able to distinguish unacceptable behavior from criminal behavior. Only then can appropriate steps be taken” (p. 6).



§22.1-279.3:1(A)*, Code of Virginia, require that the following offenses be reported to the principal and that the principal report these offenses to law-enforcement authorities.

- (i) the assault, assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a school bus, on school property, or at a school-sponsored activity;
 - (ii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, **including the theft or attempted theft of student prescription medications**;
 - (iii) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity; or
 - (iv) the illegal carrying of a firearm onto school property.
- Update** (v) **any illegal any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in §18.2-85, or explosive or incendiary devices, as defined in §18.2-433.1, or chemical bombs, as described in §18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; or**
- (vi) **any threats or false threats to bomb, as described in §18.2-83, made against school personnel or involving school property or school buses.**

Interpretation of this statute should be discussed with the local school board attorney and local Commonwealth’s Attorney.

* §22.1-280.1 was repealed. This section takes its place.

◆ III. OFFENSES

Reports of certain acts to school authorities. §22.1-279.3:1*

B. Notwithstanding the provisions of Article 12 (§16.1-299 et seq.) of Chapter 11 of Title 16.1, local law-enforcement authorities may report, and the principal or his designee may receive such reports, on offenses, wherever committed, by students enrolled at the school if the offense would be a felony if committed by an adult or would be an adult misdemeanor involving any incidents described in clauses (i) through (v) of subsection A.

C. The principal or his designee shall submit a report of all incidents *required or authorized to be reported pursuant to this section* to the superintendent of the school division. The division superintendent shall annually report all such incidents to the Department of Education for the purpose of recording the frequency of such incidents on forms which shall be provided by the Department and shall make such information available to the public. A division superintendent who knowingly fails to comply or secure compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized in §22.1-65. A principal who knowingly fails to comply or secure compliance with the reporting requirements of this section shall be subject to sanctions prescribed by the local school board, which may include but need not be limited to demotion or dismissal.

The principal or his designee shall *also* notify the parent of any student involved in an incident required by subsection A *or authorized by subsection B* to be reported, regardless of whether disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall relate to only the relevant student's involvement and shall not include information concerning other students.

Whenever any student commits any reportable incident as set forth in this section, such student shall be required to participate in such prevention and intervention activities as deemed appropriate by the superintendent or his designee. Prevention and intervention activities shall be identified in the local school division's drug and violence prevention plans developed pursuant to the federal Improving America's Schools Act of 1994 (Title IV - "Safe and Drug-Free Schools and Communities Act").

D. The principal shall report to the local law-enforcement agency any act enumerated in subsection A which may constitute a criminal offense.

Update

E. A statement providing a procedure and the purpose for the requirements of this section shall be included in the policy manual of all school divisions.

* §22.1-280.1 was repealed. This section takes its place.

Section III is organized alphabetically by offenses. For each offense, the following information is provided:

- ◆ **Code of Virginia** references
- ◆ **Key Elements** of the offense
- ◆ **Penalties** for the offense (see note below)
- ◆ **Related Reading**
- ◆ Space is reserved to cross-reference **Related Local School Board Policy**

IMPORTANT NOTE REGARDING PENALTIES

References to felony or misdemeanor levels of penalties are provided for the purpose of showing their severity.

- ◆ *Persons under 18 years of age (other than those transferred for trial as adults) are “adjudicated delinquent of offenses that would be crimes if committed by adults” rather than found guilty of felonies or misdemeanors.*
- ◆ *Students over 18 years of age, however, are tried as adults and, if found guilty, convicted of felonies or misdemeanors.*
- ◆ *Students who commit offenses when they are under 18 years of age, but sentenced after they attain 18, may be sentenced to up to 12 months in jail and/or receive a fine up to \$2500 for a single or multiple offenses (§16.1-284).*

Section III does not list all criminal offenses. The offenses listed are examples of crimes most frequently encountered in the school environment.

◆ III. OFFENSES

Requirements for Restitution and Community Service Enacted

§16.1-278.8. Delinquent juveniles.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: §§18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.1, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147; or for any violation of a local ordinance adopted pursuant to §18.2-138.1. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

Offenses included:

- | | |
|-------------|--|
| §18.2-51 | Shooting, stabbing, etc., with intent to maim, kill, etc |
| §18.2-51.1 | Malicious bodily injury to law-enforcement officers or firefighters |
| §18.2-52 | Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire |
| §18.2-53 | Shooting, etc., in committing or attempting a felony |
| §18.2-55 | Bodily injuries caused by prisoners, probationers or parolees |
| §18.2-56 | Hazing |
| §18.2-57 | Assault and battery |
| §18.2-57.2 | Assault and battery against a family or household member |
| §18.2-121 | Entering property of another for purpose of damaging it, etc |
| §18.2-127 | Injuries to churches, church property, cemeteries, burial grounds, etc. |
| §18.2-128 | Trespass upon church or school property |
| §18.2-137 | Injuring, etc., any property, monument, etc |
| §18.2-138 | Damaging public buildings, etc. |
| §18.2-146 | Breaking, injuring, defacing, destroying or preventing the operation of vehicle, aircraft or boat |
| §18.2-147 | Entering or setting in motion, vehicle, aircraft, boat, locomotive or rolling stock of railroad |
| §18.2-138.1 | Willful and malicious damage to or defacement of public or private facilities |

Arson**Burning or destroying a meeting house or schoolhouse**
§18.2-79**Key Elements**

- ♦ The person must maliciously burn or maliciously destroy by use of explosive device or substance, or
- ♦ Procure the burning or destroying of any college, academy, school, or other building erected for public use.
- ♦ The destruction may be in whole or in part--only a *slight* burning is necessary to violate this section of the Code.

“Malicious” means doing a wrongful act intentionally or as a result of ill will. Evidence of maliciousness can be shown by looking at a person’s words or inferred by looking at the person’s acts that necessarily result in injury. Ultimately, a judge or jury determines if the act involved malice.

Penalty

- ♦ Class 4 felony if no person occupies the burned building
- ♦ Class 3 felony if at least one person occupies the building

Additional penalties apply when selection of crime victims is based upon race, sexual orientation, religious conviction, color or national origin. (See Hate Crimes).

Burning or destroying personal property **§18.2-81****Key Elements**

- ♦ A violation requires malicious intent
- ♦ Involves setting fire to, burning or destroying, or causing to be burned or destroyed, or procuring the burning or destroying of any personal property.

Penalty

- ♦ Class 4 felony if the property is worth \$200 or more
- ♦ Class 1 misdemeanor if the damage is less than \$200

◆ III. OFFENSES

Arson (continued)

Burning a building or structure while in such building or structure with intent to commit a felony §18.2-82

Key Elements

- ◆ If any person while in any building or structure
- ◆ With intent to commit a felony
- ◆ Burns the building or causes it to be burned in whole or in part,
- ◆ And the act is not punishable under any other section of the Code.

Penalty

- ◆ Class 4 felony



Related Reading

Juvenile Firesetting and Arson (1997) by Eileen M. Garry. Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Available Online at:

Update

<http://www.ncjrs.org/tfiles/fs9751.txt>

Juvenile Firesetting. Available Online at www.juvenilejustice.com/firesetting.html

Related Local School Board Policy

Assault and Battery

Assault and Battery §18.2-57

An **assault** is a threat of bodily injury.

A **battery** is any bodily hurt, however slight, done to another in an angry, rude or vengeful manner.

Key Elements

- ♦ An assault becomes an aggravated assault when either the injury is serious or a deadly or dangerous weapon is used with or without actual injury. ("Serious" means injury requiring treatment beyond simple first aid.)
- ♦ An actual, intentional physical contact without the victim's permission is a battery.
- ♦ But if a person intentionally selects the victim because of race, religious conviction, color or national origin, there is a higher penalty. (Refer to Hate Crimes)

Penalty

- ♦ Class 6 felony for the commission of (i) assault and battery resulting in bodily injury and (ii) entering property with the intent to damage, when either offense is committed because of race, religious conviction, color or national origin of the person, owner, or occupant. The minimum mandatory term of six months remains effective with the increased penalty.

In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a mandatory, minimum sentence of fifteen days in jail, two days of which shall not be suspended in whole or in part. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to §18.2-308.1, the person shall serve a mandatory, minimum sentence of confinement of six months which shall not be suspended in whole or in part.

Update Effective July 1, 2002

F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any teacher, **principal, assistant principal, guidance counselor, or school security officer**, in the course and scope of his acting official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments **that were made by a teacher, principal, assistant principal, guidance counselor, or school security officer** at the time of the event.

◆ III. OFFENSES

Assault and Battery (continued)

<p>Related Local School Board Policy</p>

Attendance (also refer to Truancy)

Every parent. . . shall send such child to public school or to private, denominational or parochial school. . . §22.1-254

Key Elements

- ◆ §22.1-254 (Every parent who has a child aged five through seventeen, shall send the child to school); §22.1-255 (Any person who resides with the child of a nonresident parent shall pay the child's tuition and be subject to §22.1-254); and §22.1-267 (A parent who permits a child to be habitually absent from school).

Penalty

- ◆ Class 3 misdemeanor
- ◆ If a court finds that the violation is knowing and willful, and the person was previously convicted of violating these provisions, the person is guilty of a Class 2 misdemeanor.

Appointment of attendance officers §22.1-258

Every school board shall have power to appoint one or more attendance officers who shall be charged with the enforcement of the provisions of this article. Where no attendance officer is appointed by the school board, the division superintendent shall act as attendance officer.

Notification when pupil fails to report to school §22.1-258

Whenever any pupil fails to report to school on a regularly scheduled school day and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, a reasonable effort to notify by telephone the parent to obtain an explanation for the pupil's absence shall be made by the attendance officer, other school personnel, or volunteers organized by the school administration for this purpose. Any such volunteers shall not be liable for any civil damages for any acts or omissions resulting from making such reasonable efforts to notify parents and obtain such explanation when such acts or omissions are taken in good faith, unless such acts or omissions were the result of gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law. School divisions are encouraged to use noninstructional personnel for this notice.

Whenever any pupil fails to report to school for a total of five scheduled school days for the school year and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, and a reasonable effort to notify the parent has failed, the school principal or his designee shall make a reasonable effort to ensure that direct contact is made with the parent, either in person or through telephone conversation, by the attendance officer to obtain an explanation for the pupil's absence and to explain to the parent the consequences of continued nonattendance. The attendance officer, the pupil, and the pupil's parent shall jointly develop a plan to resolve the pupil's nonattendance. Such plan shall include documentation of the reasons for the pupil's nonattendance.

◆ III. OFFENSES

Attendance (continued)

If the pupil is absent an additional day after direct contact with the pupil's parent and the attendance officer has received no indication that the pupil's parent is aware of and supports the pupil's absence, the attendance officer shall schedule a conference within ten school days with the pupil, his parent, and school personnel, which conference may include other community service providers, to resolve issues related to the pupil's nonattendance. The conference shall be held no later than fifteen school days after the sixth absence. Upon the next absence by such pupil without indication to the attendance officer that the pupil's parent is aware of and supports the pupil's absence, the school principal or his designee shall notify the attendance officer or the division superintendent, as the case may be, who shall enforce the provisions of this article by either or both of the following: (i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in §16.1-228 or (ii) instituting proceedings against the parent pursuant to §18.2-371 or §22.1-262. In filing a complaint against the student, the attendance officer shall provide written documentation of the efforts to comply with the provisions of this section. In the event that both parents have been awarded joint physical custody pursuant to § 20-124.2, and the school has received notice of such order, both parents shall be notified at the last known addresses of the parents.

Nothing in this section shall be construed to limit in any way the authority of any attendance officer or division superintendent to seek immediate compliance with the compulsory school attendance law as set forth in this article. Whenever any pupil fails to report to school and no indication has been received by school personnel that the pupil's parent or guardian is aware of the absence, a reasonable effort to notify them by telephone shall be made.

Attendance officers, other school personnel or volunteers organized by the school administration for this purpose shall be immune from any civil or criminal liability in connection with the notice to parents of a pupil's absence or failure to give such notice as required by this section.

Reports of children enrolled and not enrolled; nonattendance §22.1-260

B. At the end of each school year, each public school principal shall report to the division superintendent the number of pupils by grade level for whom a conference was scheduled as required by §22.1-258. The division superintendent shall compile such grade level information for the division and provide such information to the Superintendent of Public Instruction annually.

Complaint to court when parent fails to comply with law. §22.1-262

A list of persons notified pursuant to §22.1-261 shall be sent by the attendance officer to the appropriate school principal. If the parent (i) fails to comply with the provisions of §22.1-261 within the time specified in the notice; or (ii) fails to comply with the provisions of § 22.1-254; or (iii) refuses to participate in the development of the plan to resolve the student's nonattendance or in the conference provided for in §22.1-258, it shall be the duty of the attendance officer, with the knowledge and approval of the division superintendent, to make complaint against the pupil's parent in the name of the Commonwealth before the juvenile and domestic relations

Attendance (continued)

district court. If proceedings are instituted against the parent for failure to comply with the provisions of §22.1-258, the attendance officer is to provide documentation to the court regarding the school division's compliance with §22.1-258. In addition thereto, such child may be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§16.1-226 et seq.) of Title 16.1.

Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article. §22.1-254.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and

2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. A school board may excuse from attendance at school:

1. On recommendation of the principal and the division superintendent and with the written consent of the parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school; and

2. On recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

D. Local school boards may allow the requirements of subsection A of this section to be met under the following conditions:

For a student who is at least sixteen years of age, there shall be a meeting of the student, the student's parents, and the principal or his designee of the school in which the student is enrolled in which an individual student alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which plan must include:

◆ III. OFFENSES

Attendance (continued)

- a. Career guidance counseling;
- b. Mandatory enrollment and attendance in a general educational development (GED) preparatory program or other alternative education program approved by the local school board with attendance requirements that provide for reporting of student attendance by the chief administrator of such GED preparatory program or approved alternative education program to such principal or his designee;
- c. Counseling on the economic impact of failing to complete high school; and
- d. Procedures for re-enrollment to comply with the requirements of subsection A of this section.

A student for whom an individual student alternative education plan has been granted pursuant to this subsection and who fails to comply with the conditions of such plan shall be deemed to be in violation of subsection A of this section.

Students enrolled with an individual student alternative education plan shall be counted in the average daily membership of the school division.

E. A school board may, in accordance with the procedures set forth in §22.1-277 and upon a finding that a school-age child has (i) committed an offense in violation of school board policies, (ii) been charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person, or (iii) been expelled from school attendance pursuant to §22.1-277.01, require the child to attend an alternative education program as provided in §22.1-209.1:2 or §22.1-277.1.

F. Whenever a court orders any pupil into an alternative education program offered in the public schools, the local school board of the school division in which the program is offered shall determine the appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its school division.

The juvenile and domestic relations district court of the county or city in which a pupil resides or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other education program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§22.1-277, 22.1-277.01, and 22.1-277.2. As used in this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

Attendance (continued)**Complaint to court when parent fails to comply with law. §22.1-262**

- ♦ It shall be the duty of the attendance officer, with the knowledge and approval of the division superintendent, to make complaint in the name of the Commonwealth before the juvenile and domestic relations district court.
- ♦ In addition, such child may be proceeded against as a child in need of supervision as provided in Title 16.1.

Note: In cases of school non-attendance, action may be taken against the parent, the child, or both the parent and child, depending on the circumstances.

Home Instruction: A lawful alternative to school attendance**Any parent shall . . . provide for home instruction of such child
§22.1-254.1**

Parents are permitted to provide home instruction as an alternative to school attendance. They must notify the School Division Superintendent and demonstrate evidence of satisfactory progress by the children on an annual basis.

**Related Reading**

Manual to Combat Truancy. (July 1996). U. S. Department of Justice and U. S. Department of Education. Available Online at <http://www.ed.gov/pubs/Truancy>.

“Annual Report on Home Instruction.” Virginia Department of Education, SUPTS. MEMO No. 140, August 9, 1996. Available at www.pen.k12.va.us

“Truancy Reduction: Keeping Students in School.” By Myriam L. Baker, Jane Nady Sigmon, and M. Elaine Nugent. Juvenile Justice Bulletin. September 2001. Available online at www.ncjrs.org/html/ojjdp/jjbul2001_9_1/contents.html

Update

Related Local School Board Policy

◆ III. OFFENSES

Bomb Threats

Threats to bomb or damage buildings or false information as to the danger of bombing to such buildings §18.2-83

Key Elements

- ◆ Any person who communicates to another by any means, a threat to bomb, burn, destroy, or damage a building in any manner or any place of assembly, building or other structure or any means of transportation, or
- ◆ Any person who communicates false information to another about the existence of any danger of bombing, burning, destruction, or damage to a place of assembly or structure or means of transportation and the person knows that the information is false.

Penalty

- ◆ Class 5 felony if person is aged fifteen or older
- ◆ Class 1 misdemeanor if person is younger than age fifteen

Additional penalties apply when selection of crime victims is based upon race, sexual orientation, religious conviction, color or national origin. (See Hate Crimes).

Delinquent children; loss of driving privileges for alcohol, firearm and drug offenses; truancy. §16.1-278.9

Update

A. If a court has found facts which would justify a finding that a child at least thirteen years of age at the time of the offense is delinquent and such findings involve (viii) a violation of §18.2-83, the court shall order that the child be denied a driver's license. If the offense involves a violation designated under clause (i), (ii), (iii) or (vii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of seventeen, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of eighteen, whichever is longer, for a second or subsequent such offense.

Causing or inciting the commission of an act prohibited by §18.2-83 (Communicating threats to bomb a building) §18.2-84

Key Elements

- ◆ Any person who is aged fifteen or older including the parent of any child who causes, incites, or solicits any person to do what is prohibited by §18.2-83

Penalty

- ◆ Class 5 felony

***Bomb Possession or Manufacture* §18.2-85**

Key Elements

- ♦ Any person who possesses materials with which fire bombs or explosive materials or devices can be made
- ♦ With intent to manufacture a fire bomb or explosive material or device.
- ♦ Any person who manufactures, transports, distributes possesses, or uses a fire bomb or explosive materials or device.

Penalty

- ♦ Class 5 felony

Imitation Bomb; Hoax Explosive §18.2-85

Key Elements

- ♦ Any person who constructs, uses, places, sends, or causes to be sent any hoax explosive device (imitation designed to appear to be a bomb),
- ♦ So as to intentionally cause another person to believe that such a device is a bomb or explosive.

Penalty

- ♦ Class 6 felony

**Smoke Bomb - Setting off chemical bombs capable of producing smoke in schools
§18.2-87.1**

Key Elements

- ♦ A person who willfully and intentionally sets off or causes to be set off any chemical bomb capable of producing smoke in any building used for public assembly or regularly used by the public, including schools.

Penalty

- ♦ Class 2 misdemeanor

Related Local School Board Policy

◆ III. OFFENSES

Breaking and Entering

Breaking and entering dwelling house with intent to commit other misdemeanor §18.2-92

Key Elements

- ◆ If any person break and enter a dwelling house while said dwelling is occupied, either in the day or nighttime, with the intent to commit any misdemeanor except assault and battery or trespass.

Penalty

- ◆ Class 6 felony.
- ◆ Class 2 felony if the person was armed with a deadly weapon at the time of such entry

Related Local School Board Policy

Bullying

According to the National School Safety Center, bullying is a euphemism for activities committed by youths that, if committed by adults, would be considered criminal. Although bullying is not specifically addressed by the Code of Virginia, the patterns of behavior associated with bullying may include the following criminal offenses:

Assault	Larceny
Battery	Robbery; theft
Extortion	Threats
False Imprisonment	Sexual harassment
Hazing	

The National School Safety Center (***School Safety***, Fall 1996) advises the following:

- ◆ Make a commitment that bullying and intimidation will not be tolerated.
- ◆ Assess the situation.
- ◆ Establish clear behavior expectations.
- ◆ Empower students with problem-solving skills.
- ◆ Provide adequate supervision.
- ◆ Focus on prevention.
- ◆ Provide support and protection for victims
- ◆ Emphasize student responsibility and parent accountability.
- ◆ Enlist the support of the court.



Related Reading

“Preventing Bullying” by Linda Lumsden, ERIC Clearinghouse on Educational Management, ERIC Digest 155, March 2002. Available at

<http://ericcass.uncg.edu/virtuallib/bullying/1068.html>

Update

“Combating Fear and Restoring Safety in Schools.” By June L. Arnette and Marjorie C. Walsleben. Juvenile Justice Bulletin, April 1998. Available at

<http://ojjdp.ncjrs.org/jjbulletin/9804/contents.html>.

Related Local School Board Policy

◆ III. OFFENSES

Burglary

Burglary §18.2-89

Key Elements

- ◆ Any person break and enter the dwelling house of another in the nighttime with intent to commit a felony or any larceny therein

Penalty

- ◆ Class 3 felony; provided, however, that if such
- ◆ Class 2 felony if person was armed with a deadly weapon at the time of such entry

Entering dwelling house, etc., with intent to commit murder, rape, robbery or arson §18.2-90

Key Elements

- ◆ Any person in the nighttime enters without breaking or in the daytime breaks and enters or enters and conceals himself in a dwelling house or an adjoining, occupied outhouse or in the nighttime enters without breaking or at any time breaks and enters or enters and conceals himself in any office, shop, manufactured home, storehouse, warehouse, banking house, church as defined in §18.2-127, or other house, or any ship, vessel or river craft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation,
- ◆ With intent to commit murder, rape, robbery or arson in violation of §§18.2-77, 18.2-79 or §18.2-80, he shall be deemed guilty of statutory burglary,

Penalty

- ◆ Class 3 felony
- ◆ Class 2 felony if such person was armed with a deadly weapon at the time of such entry.

Related Local School Board Policy

Communications Devices

Update §22.1-279.6* Guidelines for school board policies, school board regulations governing student conduct.

Any school division in the Commonwealth may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such regulations will be subject.

Related Local School Board Policy

* 22.1-278.2. Authority for regulation of use of beepers or other portable communications devices and laser pointers was repealed. This section takes its place.

◆ III. OFFENSES

Computer Crimes

Computer fraud §18.2-152.3

Key Elements

The following persons are guilty of the crime of computer fraud:

Any person who uses a computer or computer network *without authority* and *with the intent to*

- ◆ Obtain property or services by false pretenses;
- ◆ Embezzle or commit larceny;
- ◆ Convert the property of another.

Penalty

- ◆ Class 5 felony if the value of the property or services obtained is **\$500** or more
- ◆ Class 1 misdemeanor if the value of the property is less than **\$500**

Computer trespass §18.2-152.4

Key Elements

The following persons are guilty of the crime of computer trespass:

Any person who uses a computer or computer network without authority and with the intent to

- ◆ Temporarily or permanently remove computer data, computer programs, or computer software from a computer or computer network;
- ◆ Cause a computer to malfunction, regardless of how long the malfunction persists;
- ◆ Alter or erase any computer data computer programs, or computer software;
- ◆ Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
- ◆ Cause physical injury to the property of another;
- ◆ Make or cause to be made an unauthorized copy including printed or electronic data, computer programs or computer software.

Falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

Penalty

- ◆ Class 1 misdemeanor
- ◆ Class 6 felony if such an act is done maliciously and the value of the damaged property is \$2,500 or more

Computer Crimes (continued)

Civil relief; damages §18.2-152.12 (A) and (D)

Any person whose property or person is injured by reason of a violation of the Virginia Computer Crimes Act (§18.2-152.1, *et seq*) may sue and recover for any damages sustained and the costs of a lawsuit. A civil action under this section must be commenced before the expiration of the time period prescribed in §8.01-40.1 (five years after the last activity constituting a violation of the Computer Crimes Act, or two years after the injured person discovers or reasonably should have discovered the last activity constituting a violation of the Computer Crimes Act, whichever event comes first.)

Use of communications systems to facilitate certain offenses involving children. §18.2-374.3.

A. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of §18.2-370 or §18.2-374.1. A violation of this section shall be punishable as a Class 6 felony.

B. It shall be unlawful for any person over the age of eighteen to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a minor for (i) any activity in violation of §§18.2-355, 18.2-358, 18.2-361 or §18.2-370, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1. As used in this subsection, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications system.

A violation of this section shall be punishable as a Class 5 felony.



Related Reading

Acceptable Use Policies: A Handbook. Virginia Department of Education. Available from website: <http://www.pen.k12.va.us/go/VDOE/Technology/AUP/home.shtml#intro>

Related Local School Board Policy

◆ III. OFFENSES

Cursing

Cursing, using abusive language toward another so as to provoke a breach of peace §18.2-416

Key Elements

- ◆ If any person in the presence or hearing of another curses or abuses the other person, or
- ◆ Uses violent, abusive language toward another concerning himself or any of his relations to provoke a breach of the peace.

Penalty

- ◆ Class 3 misdemeanor

Related Local School Board Policy

Disorderly Conduct

Disorderly conduct in public places §18.2-415

Key Elements

- ♦ The person must have intent to cause a public inconvenience, annoyance, or harm, or recklessly creates a risk, and
- ♦ He or she engages in conduct that has a direct tendency to cause acts of violence by the people at whom such conduct is directed, and
- ♦ He or she willfully (or while intoxicated) disrupts any meeting of the governing body of any school; and
- ♦ If the disruption prevents or interferes with the orderly conduct of meetings, or willfully disrupts the operation of any school or any activity conducted or sponsored by any school

Penalty

- ♦ Class 1 misdemeanor

The person in charge of any such building, place, meeting, conveyance or activity may peaceably eject any person from the building who violates any provision of this section, if necessary, with the aid of any person who may be called upon for such a purpose.

Related Local School Board Policy

◆ III. OFFENSES

Embezzlement

Embezzlement deemed larceny §18.2-111

Key Elements

- ◆ The person wrongfully and fraudulently converted to his own use, used, disposed of, or concealed the property; and
- ◆ The property had been received by the person by virtue of his employment, office, trust for his employer, principal or bailor, entrusted or delivered to the person by another; and
- ◆ Value of the property was \$200 or more.

Penalty

- ◆ Class 5 felony if value of property was \$200 or more (grand larceny)
- ◆ Class 1 misdemeanor if value of property was less than \$200 (petit larceny)

Note: Embezzlement and larceny are separate offenses with different elements. The key distinction between embezzlement and larceny is that larceny involves a taking of property while embezzlement involves a conversion of property which was received with the owner's consent.

Related Local School Board Policy

Extortion

Extortion is unlawfully obtaining or attempting to obtain something of value from another by compelling the other person to deliver it by the threat of eventual physical injury or other harm to that person or the person's property, or a third person. §18.2-59

Note: **Blackmail** is the common name for extortion where the threat is not physical but relates to exposing some secret or true or alleged fact which would do harm to someone's circumstances or damage his or her reputation.

Key Elements

- ◆ Person made a threat of injury to the person, character or property to another; and
- ◆ The threat caused the person threatened or accused or any other person to part with his money, property, benefit, note bond or other evidence of debt; and
- ◆ The property was given to the defendant or someone designated by the defendant.

Penalty

- ◆ Class 5 felony

Related Local School Board Policy

◆ III. OFFENSES

False Reports

Falsely summoning or giving false reports to law-enforcement officials §18.2-461

Key Elements

- ◆ It shall be unlawful for any person
 - (i) to knowingly give a false report as to the commission of any crime to any law-enforcement official with intent to mislead, or
 - (ii) without just cause and with intent to interfere with the operations of any law-enforcement official, to call or summon any law-enforcement official by telephone or other means, including engagement or activation of an automatic emergency alarm.

Penalty

- ◆ Class 1 misdemeanor.

Falsely Reporting Child Abuse §63.1-248.5:1.01

Key Elements

- ◆ Any person fourteen years of age or older who makes or causes to be made a report of child abuse or neglect pursuant to this chapter which he knows to be false shall be guilty of a Class 1 misdemeanor.
- ◆ Any person fourteen years of age or older who has been previously convicted under this subsection and who is subsequently convicted under this subsection shall be guilty of a Class 6 felony.
- ◆ The child protective services records regarding the person who was alleged to have committed abuse or neglect which result from a report for which a conviction is obtained under this section shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of such conviction. After purging the records, the custodian shall notify the person in writing that such records have been purged.

Penalty

- ◆ Class 1 misdemeanor for first conviction; Class 6 felony for subsequent conviction.

For additional information on child abuse, see Section V.

Related Local School Board Policy
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Fire Alarms (False)

Fire alarms §18.2-212

Key Elements

- ◆ Any person who without just cause calls or summons by telephone or otherwise any ambulance or fire-fighting apparatus, or
- ◆ Any person who maliciously activates a manual or automatic fire alarm in a building used for public assembly or for a public purpose, (including public schools), regardless of whether the fire department responds

Penalty

- ◆ Class 1 misdemeanor

Related Local School Board Policy

◆ III. OFFENSES

Fireworks

Manufacture, transportation, sale of fireworks unlawful §59.1-142

Key Elements

It is unlawful under *state* law for *any* person. . .

- ◆ To transport, manufacture, store, sell, offer for sale, expose for sale, or to buy, use, ignite or explode any firecracker, torpedo, skyrocket, or other substance or thing, of whatever form or construction, that contains any explosive or inflammable compound or substance commonly known as fireworks.
- ◆ This section does not apply to any person who manufactures, stores, markets or distributes fireworks for the sole purpose of fireworks displays.
- ◆ It does not apply to *local* ordinances prohibiting fireworks sales, storage, use, possession or manufacture. (§59.1-148).

Exception for certain fireworks; such fireworks to be used only on private property §59.1-147

Key Elements

- ◆ This part of the Code does not apply to the use or sale of sparklers, fountains, Pharoah's serpents, caps for pistols, or pinwheels, commonly known as whirligigs, or spinning jennies, that are used, ignited or exploded only on private property with the consent of the owner

Related Local School Board Policy

Forgery

Forgery is the fraudulent making or altering of a writing to the prejudice of another person's right. §18.2-172

Note: The creation, alteration, or deletion of any computer data contained in any computer or computer network which if done on a tangible document or instrument would constitute forgery will also be deemed to be forgery.

Key Elements

- ♦ Any person, with intent to defraud, falsely makes or materially alters a written document without authority to do so; and
- ♦ To the prejudice of another's right.

Related Local School Board Policy

◆ III. OFFENSES

Gambling

Definitions of gambling device and illegal gambling §18.2-325

- ◆ A gambling device includes any device, machine, paraphernalia, equipment, or other thing, including books, records, and other papers, which are actually used in illegal gambling operations or activity.
- ◆ Illegal gambling means the making, placing or receipt, of any bet or wager of money or other thing of value, made in exchange for a chance to win a prize, stake or other consideration or thing of value, dependent upon the result of any game, contest or any other event with an uncertain outcome, whether or not the event occurs inside or outside of Virginia.

Penalty

- ◆ Class 3 misdemeanor

Illegal possession of gambling devices §18.2-331

Key Elements

- ◆ A person is guilty of illegal possession of a gambling device when he manufactures, sells, transports, rents, gives away, places or possesses, or conducts or negotiates any transaction affecting or designed to obtain ownership, custody or use of any gambling device.
- ◆ The person must form the belief that the gambling device will be used to advance an unlawful gambling activity.

Penalty

- ◆ Class 1 misdemeanor

Related Local School Board Policy

Gang-Related Activities

§16.1-299.2, **Code of Virginia** defines “youth gang” as an ongoing organization, association or group (i) having common characteristics, including but not limited to initiation practices, hand signals, structured style of dress, specific geographic territorial claim or identifiable leadership and (ii) consisting of three or more individuals, at least one of whom is a juvenile, who identify themselves as a group by a name or symbol and are involved in a pattern of recurrent felonious criminal conduct.

When it is determined, either by admission or investigation, by a state or local law-enforcement agency or a regional multi-jurisdictional law-enforcement task force, that a juvenile who has been arrested is a member of a youth gang, the arresting officer shall enter the juvenile's name and other appropriate gang-related information required by the Department of State Police into the Youth Gang File of the Virginia Crime Information Network. The entry shall be made as soon as practical after the determination is made.

§16.1-269.2.

- ◆ Allows the court to require a juvenile found delinquent based on certain crimes to participate in a gang-activity prevention program funded under the Virginia Juvenile Community Crime Control Act and
- ◆ Requires that Juvenile Court transfer reports and social history reports include an assessment of affiliation with a youth gang.

See Section V. Related Topics and Issues for additional information on Gangs.



Related Reading:

The Study of Youth Gangs in Virginia (House Document No. 30, 1997). Virginia State Commission on Youth. Available from the Legislative Information System at <http://leg1.state.va.us/>

Update “Youth Gangs in Schools.” By James C. Howell and James P. Lynch. In **Juvenile Justice Bulletin**, August 2000. Available at http://www.ncjrs.org/html/ojjdp/jjbul2000_8_2/contents.html

Related Local School Board Policy

◆ III. OFFENSES

Hate Crimes

(See also: Assault and Battery and Property Offenses)

Placing swastikas on school property §18.2-423.1

Key Elements

- ◆ A person must either place or cause to be placed a swastika on any school or educational facility.
- ◆ Person must have the intent of intimidating another person or group of persons to be in violation.
- ◆ The actual placing of a swastika on school property is *prima facie* evidence or presumptive proof of an intent to intimidate another person or group of persons.

Penalty

- ◆ Class 6 felony

Burning a cross on the property of another with intent to intimidate a person or group of persons §18.2-423

Key Elements

- ◆ To burn a cross with the intent to intimidate any person or groups of persons.
- ◆ Any burning is *prima facie* evidence of an intent to intimidate a person or groups of persons.

Penalty

Class 6 felony

Entering property of another for the purpose of damaging it §18.2-121

Key Elements and Penalties

- ◆ It is a Class 1 misdemeanor for any person to enter another person's land, dwelling, outhouse or any other building to damage the property and interfere with the owner, user, occupant's rights.
- ◆ But it is a Class 6 felony if a person intentionally selects the property because of the race, religion, color or national origin of the owner, user or occupant.
- ◆ Six months is the mandatory minimum term of confinement for racially motivated acts, at least thirty days of which must be served.

Hate Crimes (continued)

NOTE: The selection of crime victims based upon race, sexual orientation, religious conviction, color or national origin carries additional penalties for the following offenses:

§18.2-51.2. Aggravated malicious wounding

§18.2-60. Threats of death or bodily injury to a person or member of his family; certain oral threats communicated to school personnel

§18.2-77. Burning or destroying dwelling house, etc.

§18.2-79. Burning or destroying meeting house, etc.

§18.2-80. Burning or destroying any other building or structure.

§18.2-83. Threats to bomb or damage buildings or means of transportation; false information as to danger to such buildings, etc.

Civil action for racial, religious, or ethnic harassment, violence or vandalism §8.01-42.1

- ◆ Any person may bring an injunctive action in court or a claim for damages if the person is subjected to any of the following acts motivated by racial, religious or ethnic animosity:
 - ◆ Intimidation or harassment
 - ◆ Violence directed against his or her person
 - ◆ Vandalism directed against his real or personal property
- ◆ Any aggrieved party who prevails in such an action is entitled to receive damages, court costs and reasonable attorney's fees.
- ◆ Section 8.01-42.1 does not apply to actions or incidents arising out of the workplace, employer or employee relationships.



Related Reading

Update

Preventing Youth Hate Crime: A Manual for Schools and Communities. U.S.

Department of Education, 2000. Available at

<http://www.ed.gov/pubs/HateCrime/start.html>

Protecting Students from Harassment and Hate Crimes: A Guide for Schools. U.S.

Department of Education, January 2000. Available at <http://www.ed.gov/pubs/Harassment/>

Related Local School Division Policy

◆ III. OFFENSES

Hazing

Hazing unlawful §18.2-56

Key Elements

- ◆ May involve mistreatment or mistreatment which causes bodily injury to a student.
- ◆ Victim has the right to file a civil suit.
- ◆ Presiding officer at a school shall expel a student found guilty of hazing.
- ◆ Presiding officer shall make a report to the local Commonwealth's attorney.
- ◆ The local Commonwealth's attorney presents a report on the hazing to a grand jury.

Penalty

- ◆ Class 1 misdemeanor
- ◆ Class 3 felony if malicious
- ◆ Class 6 felony if unlawful



Related Reading

Update

"Hazing-Debunking the Myths About This 'Right' of Passage." By Michael I. Levin, Esq. Available on ***National School Boards Association*** website at <http://www.nsba.org/nepn/newsletter/500.htm>

Related Local School Board Policy

Larceny

Larceny is the wrongful taking of the property of another without the owner's consent and with the intention to permanently deprive the owner of possession of the property.

Grand larceny defined §18.2-95

Key Elements

- ◆ Any person who
 - ◆ (i) Commits larceny from the person of another of money or other thing of value of \$5 or more,
 - ◆ (ii) Commits simple larceny not from the person of another of property of the value of \$200 or more, or
 - ◆ (iii) Commits simple larceny not from the person of another of any handgun, rifle, or shotgun, regardless of the handgun's, rifle's, or shotgun's value, shall be guilty of grand larceny.

Penalty

- ◆ This is an unclassified felony. Penalty is not less than one or more than twenty years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than \$2,500, either or both.

Petit larceny defined §18.2-96

Key Elements

- ◆ Any person who commits larceny from the person of another of money or other thing of value of less than \$5, or
- ◆ Commits simple larceny not from the person of another of property of the value of less than \$200

Penalty

- ◆ Class 1 misdemeanor

Related Local School Board Policy

Mob

§18.2-38. "Mob" defined.

Any collection of people, assembled for the purpose and with the intention of committing an assault or a battery upon any person or an act of violence as defined in §19.2-297.1, without authority of law, shall be deemed a "mob."

§18.2-42.1. Acts of violence by mob.

Any and every person composing a mob which commits an act of violence as defined in §19.2-297.1 shall be guilty of that act of violence and, upon conviction, shall be punished as provided in the section of this title which makes that act of violence unlawful.

§18.2-41. Shooting, stabbing, etc., with intent to maim, kill, etc., by mob.

Any and every person composing a mob which shall maliciously or unlawfully shoot, stab, cut or wound any person, or by any means cause him bodily injury with intent to maim, disable, disfigure or kill him, shall be guilty of a Class 3 felony, and if any person intentionally selects the person against whom such bodily injury is inflicted because of his race, sexual orientation, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, which shall not be suspended in whole or in part.

§18.2-42. Assault or battery by mob.

Any and every person composing a mob which shall commit a simple assault or battery shall be guilty of a Class 1 misdemeanor, and if any person intentionally selects the person against whom a simple assault is committed because of his race, sexual orientation, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, thirty days of which shall not be suspended, in whole or in part.

Murder/Manslaughter

The difference between murder and manslaughter is malice. When malice is present, the killing is murder. When it is absent, the killing can be no more than manslaughter.

Voluntary manslaughter is committed by a person whose mind is in a state of heated passion, while involuntary manslaughter implies a mind that recklessly disregards human life.

Capital murder §18.2-31**Key Elements**

- ◆ Willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in §18.2-48 when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;
- ◆ The willful, deliberate, and premeditated killing of any person by another for hire;
- ◆ The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in §53.1-1, or while in the custody of an employee thereof;
- ◆ The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;
- ◆ The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;
- ◆ The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in §9-169 when such killing is for the purpose of interfering with the performance of his official duties;
- ◆ The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transgression;
- ◆ The willful, deliberate, and premeditated killing of more than one person within a three-year period; and
- ◆ The willful, deliberate, and premeditated killing of any person in the commission of or attempted commission of a violation of §18.2-248, involving Schedule I or II controlled substance, when such killing is for the purpose of furthering the commission or attempted commission of such violation.
- ◆ The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I of §18.2-248; and
- ◆ The willful, deliberate, and premeditated killing of a pregnant woman by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth.

◆ III. OFFENSES

Murder/Manslaughter (continued)

Penalty

- ◆ Class 1 felony

First and second degree murder §18.2-33

Key Elements

- ◆ Murder, other than capital murder, by poison, lying in wait, imprisonment, starving, or by any willful deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, rape, forcible sodomy, inanimate object sexual penetration, robbery, burglary or abduction, except as provided in §18.2-31, is murder in the first degree.

Penalty

- ◆ Class 2 felony.

All murder other than capital murder and murder in the first degree is murder in the second degree.



Related Reading

Juvenile Homicide (1989). Edited by Elissa P. Benedek, M. D. and Dewey G. Cornell, Ph.D.

Related Local School Board Policy

Peeping**§18.2-130. Peeping or spying into dwelling or enclosure.****Key Elements**

It shall be unlawful for any person

- ◆ to enter upon the property of another and secretly or furtively peep, spy or attempt to peep or spy into or through a window, door or other aperture of any building, structure, or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure or enclosure is permanently situated or transportable and whether or not such occupancy is permanent or temporary.
- ◆ to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location or enclosure for the purpose of viewing any non-consenting person who is totally nude, clad in undergarments, or in a state of undress exposing the genitals, pubic area, buttocks or female breast and the circumstances are such that the person would otherwise have a reasonable expectation of privacy.
- ◆ As used in this section, "peephole" means any hole, crack or other similar opening through which a person can see.

Exceptions

- ◆ The provisions of this section shall not apply to a lawful criminal investigation or a correctional official or local or regional jail official conducting surveillance for security purposes or during an investigation of alleged misconduct involving a person committed to the department of Corrections or to a local or regional jail.

Penalty

- ◆ A violation of this section is a Class 1 misdemeanor.

Related Local School Board Policy

◆ III. OFFENSES

Pornography

**Relating to sending e-mail considered harmful to juveniles; penalty.
§18.2-391**

Key Elements

It shall be unlawful for any person knowingly to sell, rent or loan to a juvenile, or to knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse: Any picture, photography, drawing, sculpture, motion picture film, electronic file or message containing an image, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or Any book, pamphlet, magazine, printed matter however reproduced, electronic file or message containing words, or sound recording which contains any matter enumerated in subdivision (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles. To knowingly to sell to a juvenile an admission ticket or pass, or knowingly to admit a juvenile to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by juveniles not admitted to any such premises.

It shall be unlawful for any juvenile falsely to represent to any person mentioned in subsection A or subsection B hereof, or to his agent, that such juvenile is eighteen years of age or older, with the intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation, as set forth in subsection B.

It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection A or subsection B hereof or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is eighteen years of age, with the intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation, as set forth in subsection B.

Penalty

- ◆ A violation of this section is a Class 1 misdemeanor.

Property Offenses

Burning or destroying personal property §18.2-81

Key Elements

- ◆ Involves setting fire to, burning or destroying, or causing to be burned or destroyed, or procuring
- ◆ A violation requires malicious intent the burning or destroying of any personal property.

Penalty

- ◆ Class 4 felony if the property is worth \$200 or more
- ◆ Class 1 misdemeanor if the damage is less than \$200

Minors who are caught damaging public property §8.01-43

- ◆ If a minor is caught purposely damaging or destroying public property, the Commonwealth, acting through the local government (county, town, city, or school board) can collect up to \$2,500 from the parents of the student who damaged or destroyed the property.

School board action regarding school property [§22.1-276](#)

Update *A school board may take action against a pupil for any actual breakage or destruction of or failure to return property owned by or under the control of the school board caused or committed by such pupil in pursuit of his studies.*

Related Local School Board Policy

◆ III. OFFENSES

Riot

What constitutes a riot; punishment §18.2-405

Key Elements

- ◆ A riot is any unlawful use of force or violence which seriously jeopardizes the public safety, peace or order.
- ◆ A riot is started by three or more persons acting together.

Penalty

- ◆ Class 1 misdemeanor for participating in a riot
- ◆ Class 5 felony if person carries any firearm, deadly or dangerous weapon

Remaining at place of riot or unlawful assembly after warning to disperse §18.2-407

Key Elements and Penalty

- ◆ Everyone who remains on the premises except the owner or lessee and public officers or persons assisting them during a riot or unlawful assembly after having been warned to disperse is guilty of a Class 3 misdemeanor.

Related Local School Board Policy

Robbery

The crime of robbery in Virginia is not defined by statute. The definition of the crime is found in the common law.

Robbery at common law is defined as the taking, with intent to steal, of the personal property of another, from his person or in his presence, against his will, by violence or intimidation.

Penalty

§18.2-58. How punished. – If any person commit robbery by partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever, he shall be guilty of a felony and shall be punished by confinement in a state correctional facility for life or any term not less than five years.

Related Local School Board Policy

◆ III. OFFENSES

Stalking

Stalking §18.2-60.3

Key Elements

- ◆ Any person ***except a law-enforcement officer, as defined in §9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in §9.1-138, who is regulated in accordance with §9.1-139 and acting in the course of his legitimate business,*** who on more than one occasion engages in conduct directed at another person with the intent to place, or with the knowledge that the conduct places, that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member.

Penalty

- ◆ Class 2 misdemeanor
- ◆ Class 1 misdemeanor if there was a court order prohibiting contact in effect at the time of the offense
- ◆ Class 1 misdemeanor for second offense within five years
- ◆ Class 6 felony for third or subsequent offenses within five years



Related Reading

Update

Stalking: A Guide for Victims. Department of Criminal Justice Services, Victim Services Section. Available Online at <http://www.dcjs.state.va.us/victims/documents/stalking.htm>

Related Local School Board Policy

Telephone-Related Offenses**Use of profane, threatening or indecent language over public airways.
§18.2-427****Key Elements**

- ♦ Person uses obscene, vulgar, profane, lewd, lascivious, or indecent language, or
- ♦ Makes any suggestions or proposal of any obscene nature, or threaten any illegal or immoral act
- ♦ With intent to coerce, intimidate, or harass any person
- ♦ Over any telephone or citizens band radio

Penalty

- ♦ Class 1 misdemeanor

Giving certain false information to another by telephone. §18.2-428**Key Elements**

- ♦ Person maliciously advises or informs another over any telephone
- ♦ Of the death of, accident to, injury to, illness of, or disappearance of some third party
- ♦ Knowing the same to be false

Penalty

- ♦ Class 1 misdemeanor

Causing telephone to ring with intent to annoy. §18.2-429**Key Elements**

- ♦ Person, with or without intent to communicate but with intent to annoy another person,
- ♦ Causes any telephone or digital pager, not his own, to ring or to otherwise signal, and
- ♦ Permits or condones the use of any telephone under his control for such purpose.

Penalty

- ♦ Class 3 misdemeanor

◆ III. OFFENSES

Telephone-Related Offenses (cont'd)

Calls which hinder or delay emergency personnel in the performance of their duties §18.2-429

Key Elements

- ◆ Person, with or without intent to converse, but with intent to annoy, harass, hinder, or delay emergency personnel in the performance of their duties, as such,
- ◆ Causes a telephone to ring, which is owned or leased for the purpose of receiving emergency calls by a public or private entity providing fire, police or emergency medical service, or
- ◆ Knowingly permits the use of a telephone under his control for such purpose.

Penalty

- ◆ Class 1 misdemeanor

Such telephone-related offenses may be prosecuted either in the county or city from which the call was placed or the county or city in which the call was received.

<p>Related Local School Board Policy</p>

Threats**§18.2-60 A student's threats of death or bodily injury to school personnel.****Key Elements**

- ◆ Communication is **written** and contains a threat to kill or do bodily injury;
- ◆ The writing can be signed or anonymous;
- ◆ The writing must directly threaten the person to whom it is sent, or a member of his or her family.

Penalty

- ◆ Class 6 felony

Key Elements

- ◆ Communication is **oral**, and contains a threat to kill or do bodily injury to any elementary, middle school or secondary school employee;
- ◆ Threat may occur on a school bus, on school property or during a school-sponsored activity.

Penalty

- ◆ Class 1 misdemeanor

If a person intentionally selects the person against whom such threat is made because of his race, sexual orientation, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, thirty days of which shall not be suspended, in whole or in part. (See Hate Crimes).

Related Local School Board Policy

◆ III. OFFENSES

Trespass

Trespass upon church or school property (school property includes school buses) §18.2-128

Key Elements

- ◆ Entering or remaining on school property in violation of any direction to vacate the property by a person authorized to give such direction.
- ◆ Or entering and ignoring any posted notice which contains such information posted where it reasonably may be seen.
- ◆ Each time a person enters or remains or refuses to vacate the premises, it is a separate offense.
- ◆ School property includes a school bus.

Penalty

- ◆ Class 1 misdemeanor if a person enters or refuses to leave school property
- ◆ Class 6 felony if it is any person other than a parent with the intent to abduct the student

Key Elements

- ◆ Entering school property for any purpose, in the nighttime, without the consent of the person authorized.
- ◆ Entry is allowed only to attend a meeting or service held or conducted on school property.
- ◆ School property includes a school bus.

Penalty

- ◆ Class 3 misdemeanor

Related Local School Board Policy

Truancy (also refer to Attendance)**A truant is included as a “child in need of supervision” §16.1-228****Key Elements**

“Child in need of supervision” who is truant means:

A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and

- (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs,
- (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and
- (iii) the school system has provided documentation that it has complied with the provisions of §2.1-258;

§22.1-266. Law-enforcement officers and truant children.

A. Notwithstanding the provisions of §16.1-246, any law-enforcement officer as defined in §9-169 or any attendance officer may pick up any child who (i) is reported to be truant from a public school by a school principal or division superintendent or who (ii) the law-enforcement officer or attendance officer reasonably determines, to be a public school student and by reason of the child's age and circumstances, is truant from public school, and may deliver such child to the appropriate public school or truancy center and personnel thereof without charging the parent or guardian of such child with a violation of any provision of law.

B. Any such law-enforcement officer or attendance officer shall not be liable for any civil damages for any acts or omissions resulting from picking up or delivering a public school child as provided in subsection A when such acts or omissions are within the scope of the employment of such law-enforcement officer or attendance officer and are taken in good faith, unless such acts or omissions were the result of gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law.

C. For the purposes of this section, "truancy center" means a facility or site operated by a school division, sometimes jointly with the local law-enforcement agency, and designated for receiving children who have been retrieved by a law-enforcement officer or attendance officer for truancy from school.

◆ III. OFFENSES

Truancy (continued)

Update

Delinquent children: loss of driving privileges for alcohol, firearm and drug offenses, truancy §16.1-278.9

A1. If a court finds that a child at least thirteen years of age has failed to comply with school attendance and meeting requirements as provided in [§22.1-258](#), the court shall order the denial of the child's driving privileges for a period of not less than thirty days. If such failure to comply involves a child under the age of sixteen, the child's ability to apply for a driver's license shall be delayed for a period of not less than thirty days following his sixteenth birthday.

B. Any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

Effective July 1, 2002

Modifies the current statute regarding suspension of driver's licenses for truancy to authorize courts, upon a finding of a second or subsequent truancy offense, to order the denial of a driver's license for a period of one year or until the juvenile reaches the age of eighteen, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of sixteen and three months, as may be appropriate.

Under current law, the first such offense may warrant a 30-day denial or delay in license application.

Harboring Truants §22.1-265

Key Elements and Penalties

Any person who induces or attempts to induce any child to be absent unlawfully from school or who knowingly employs or harbors, while school is in session, any child absent unlawfully shall be guilty of a Class 3 misdemeanor. If second offense, Class 2 misdemeanor.

**Related Reading**

Manual to Combat Truancy. (March 1997) U. S. Department of Education and Department of Justice. Available online at www.ed.gov/offices/OESE/SDFS/

Truancy: First Step to a Lifetime of Problems (1996) by Eileen M. Garry. Office of Juvenile Justice and Delinquency Prevention, U. S. Department of Justice.

Related Local School Division Policy

◆ III. OFFENSES

Vandalism

Damaging public buildings and personal property; Vandalism §18.2-138

Key Elements

- ◆ Any person who both willfully and maliciously breaks any window or door of any college, schoolhouse, or other public building.

Penalty

- ◆ Class 6 felony if property damage is \$1,000 or more
- ◆ Class 1 misdemeanor if damage is less than \$1,000

Minors who are caught damaging public property §8.01-43

- ◆ If a minor is caught purposely damaging or destroying public property, the Commonwealth, acting through the local government (county, town, city, or school board) can collect up to \$2,500 from the parents of the student who damaged or destroyed the property.

Any county, city or town may by ordinance make unlawful the willful and malicious damage to or defacement of any public buildings, facilities and personal property.



Related Reading

“Vandalism/Graffiti Prevention.” National Crime Prevention Council On-Line Resource Center.
<http://www.ncpc.org>

Related Local School Board Policy

Weapons - Possession

Possession of a firearm, stun weapon, or other weapon on school property prohibited §18.2-308.1

Key Elements and Penalties

If any person has in his possession any (i) stun weapon or taser as defined in this section or, (ii) **knife having a metal blade of three inches or longer**, or (iii) weapon, other than a firearm, designated in subsection A of §18.2-308 upon (i) the property of any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor. If any person has in his possession any firearm designed or intended to propel a missile of any kind while such person is upon (i) any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony.

Definitions

Firearm means any weapon in which ammunition (cartridge, pellet, ball, missile or projectile) may be used or discharged by explosion or pneumatic pressure. (*Code of Virginia*, §18.2-282.)

“Stun weapon” means any mechanism designed to emit an electronic, magnetic, or other type of charge over five milliamps, and is used for the purpose of temporarily incapacitating a person.

“Taser” means any mechanism that is designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and used for the purpose of temporarily incapacitating a person. For purposes of this paragraph, **“weapon” includes a knife having a metal blade of three inches or longer.**

Penalty

◆ Class 6 felony

If the person possesses any firearm within a public, private or parochial elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall not be eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part and which shall be served consecutively with any other sentence.

Exceptions

This section does not apply to

- i) persons who possess such weapons as part of the school’s curriculum or activities,
- ii) a person possessing a knife customarily used for food preparation or serving and using it for such purpose,
- iii) persons who possess such weapon or weapons as part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises,
- iv) any law-enforcement officer while engaged in his duties as such,
- v) any person who possesses a knife or blade which he uses customarily in his trade, or
- vi) a person who possesses an unloaded firearm which is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle.

◆ III. OFFENSES

Weapons - Possession (continued)

Expulsion of students under certain circumstances, exceptions §22.1-277.07*

- A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-"Gun-Free Schools Act of 1994"), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in §22.1-277, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by §18.2-308.1, or to have brought a firearm as defined in subsection D of this section on school property or to a school-sponsored activity. A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation, that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. ***In addition, a school board may, by regulation, authorize the***

Update

division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article.



Related Reading

"Expulsion or Suspension of Students for Firearms or Weapons." Virginia Department of Education, Supts. MEMO No. 57, March 8, 1996. Available online at www.pen.k12.va.us

Related Local School Board Policy

* §22.1-277.01 was repealed. This section takes its place.

Weapons - Possession of Firearm by a Minor
Possession or transportation of certain firearms by persons under the age of eighteen prohibited §18. 2-308.7
Key Elements

- ◆ It shall be unlawful for any person under eighteen years of age to knowingly *and* intentionally possess or transport a handgun or assault firearm anywhere in the Commonwealth.

Penalty

- ◆ Class 1 misdemeanor

Exceptions

A person under eighteen years of age may possess or transport a handgun or assault firearm

1. on own property, property of parent/grandparent or on property with owner's permission;
2. on a shooting range or in firearms educational class;
3. hunting;
4. while carrying out duties of the armed forces of the U. S.

Delinquent children: loss of driving privileges for alcohol, firearm and drug offenses, *truancy* §16.1-278.9
Key Elements and Penalties

Applies to DUI, possessing marijuana, Schedule I or II drug or possession of alcohol

- ◆ Child is at least thirteen years old at the time of the alcohol, firearm, or drug offense.
- ◆ Child is delinquent and violated either §4.1-309 or the statute on unlawful possession of a handgun,
- ◆ The court shall order that the child's driver's license be denied for six months.
- ◆ If the child is under age sixteen, the privilege to apply for a license shall be delayed until a period of six months after the child's sixteenth birthday.
- ◆ But if a child possesses a semiautomatic weapon, the denial of a driver's license shall be delayed for a period of two years following the child's sixteenth birthday.
- ◆ A child who already has a driver's license shall be ordered to surrender it.

◆ III. OFFENSES

Weapons - Concealed

Carrying a concealed, prohibited weapon

§18.2-308

Key Elements

- ◆ The following weapons are prohibited from being carried and hidden from view:
 - ◆ Pistols, revolvers or other weapons designed or intended to propel a missile of any kind;
 - ◆ Any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack;
 - ◆ Any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, such as a nun chaka, nunchaku, shuriken or fighting chain;
 - ◆ Any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled such as a throwing star or oriental dart.

Penalty

- ◆ Class 1 misdemeanor for having any of these weapons
- ◆ Class 6 felony for second violation
- ◆ Class 5 felony for a third violation

Related Local School Board Policy

Weapons - Brandishing**Pointing, holding, or brandishing firearm or object similar in appearance §18.2-282****Key Elements**

- ♦ It is unlawful to point, hold or brandish (wave) any firearm or any object similar in appearance to a firearm, whether capable of being fired or not in such a manner as to *reasonably induce fear in the mind of the victim* of being shot or injured..
- ♦ However, this section does not apply to excusable, or justifiable self-defense.

Penalty

- ♦ Class 1 misdemeanor
- ♦ Class 6 felony if the violation occurs upon any public, private or parochial elementary, middle or high school, including buildings or grounds or upon public property within 1,000 feet of such school property

Related Local School Board Policy

◆ III. OFFENSES

Weapons - Discharging Firearm

§18.2-280 Willfully discharging firearms in public places

Key Elements and Penalties

- ◆ Willfully discharging or causing to be discharged a firearm in any street or public place is a Class 1 misdemeanor.
- ◆ Willfully discharging or causing to be discharged a firearm upon any public, private or parochial elementary, middle school or high school, including buildings and grounds or upon public property within 1,000 feet of such school property is a Class 4 felony.

A. If any person willfully discharges or causes to be discharged any firearm in any street in a city or town, or in any place of public business or place of public gathering, and such conduct results in bodily injury to another person, he shall be guilty of a Class 6 felony. If such conduct does not result in bodily injury to another person, he shall be guilty of Class 1 misdemeanor.

Update

C. If any person willfully discharges or causes to be discharged any firearm upon any public property within 1,000 feet of the property line of any public, private or parochial elementary, middle or high school property he shall be guilty of a Class 4 felony, unless he is engaged in lawful hunting.

Exception

This section does not apply to any law-enforcement officer in the performance of his official duties. Nor does it apply to a lawful discharge while a person is engaged in a program or curriculum sponsored by or conducted with permission of the school.

Discharging firearm or shooting at school building whether it's occupied or not §18.2-279

Key Elements

- ◆ Any person maliciously discharges a firearm within any building when it is occupied by one or more persons in such a manner as to endanger the life or lives of such person or persons;
- ◆ Or maliciously shoots at any other building when it's occupied by one or more persons, whereby the life or lives of such persons are endangered.

Penalties

- ◆ Class 4 felony
- ◆ If the act is done maliciously and results in death, the person is guilty of murder.
- ◆ If the act is done unlawfully and there is a death, person is guilty of involuntary manslaughter.

Weapons - Furnishing, Giving, Selling**Furnishing certain weapons to minors §18.2-309****Knife: Key Elements**

- ♦ Any person sells, barter, gives, furnishes, or causes to be sold, bartered, given, or furnished to a minor a dirk, switchblade knife, or bowie knife; and
- ♦ Has good cause to believe the receiver or buyer is a minor.

Penalty

- ♦ Class 1 misdemeanor

Handgun: Key Elements

- ♦ Any person sells, barter, gives, or furnishes, or causes to be sold, bartered, given or furnished to a minor a handgun; and
- ♦ Has good cause to believe the receiver or buyer is a minor.

Penalty

- ♦ Class 6 felony.

Prohibiting the selling, giving, or bartering of blackjack, brass knuckles, disc, switchblade, etc. §18.2-311**Key Elements**

- ♦ Any person sells, barter, or exhibits for sale or for barter or gives or furnishes or causes to be sold, bartered, given, or furnished; or has in his or her possession or control with intent to sell, barter, give, or furnish;
- ♦ Any blackjack, brass or metal knuckles, disc of whatever configuration having at least two points or pointed blades, which is designed to be thrown, and is also known as a throwing star or oriental blade; switchblade, ballistic knife, or like weapons.
- ♦ Merely having these weapons in one's possession is considered to be presumptive evidence of one's intent to sell, barter, give or furnish them.

Penalty

- ♦ Class 4 misdemeanor

◆ III. OFFENSES

Weapons - Furnishing, Giving, Selling (continued)

Selling or giving toy firearms prohibited §18.2-284

Key Elements

- ◆ No person is permitted to sell, barter, exchange, furnish or dispose of by purchase, gift or any other manner a toy gun, pistol, rifle or other toy firearm if the toy gun operates by means of powder or explosive, discharge blank or ball charge.
- ◆ But this section does not include the sale of cap guns.
- ◆ Each sale of a toy firearm is a separate offense.

Penalty

- ◆ Class 4 misdemeanor

Access to firearms by children §18.2-56.2

Key Elements

- ◆ The firearm must be recklessly left for a child to gain access.
- ◆ The firearm must be loaded.
- ◆ The firearm must be left in a manner that endangers the life or limb of any child under the age of fourteen years.

Penalty

- ◆ Class 3 misdemeanor

It is a Class 1 misdemeanor to knowingly authorize a child under twelve to use a firearm except when the child is under adult supervision.

Related Local School Board Policy

IV. ALCOHOL, TOBACCO AND OTHER DRUG-RELATED OFFENSES

A Note on the Organization of Section IV

Section IV begins with an Overview of the Drug Control Act of 1970 and includes the classifications and examples of drugs and penalties associated with each classification. The Overview also includes general provisions related to reporting requirements, first time drug offenses, distribution to those under 18 years of age, imitation drugs, and drivers license-related penalties. The Overview concludes with selected Related Reading.

In the second subsection is an Overview of **School-Related Offenses** which includes provisions which are specific to schools.

In the third subsection are **Alcohol-Related Offenses**.

The fourth subsection focuses on **Drug-Related Offenses**.

The fifth and final subsection includes **Tobacco-Related Offenses**.

Some offenses are listed in more than one subsection because many laws make reference to both alcohol and drugs in the same sections of the **Code**. Listing some offenses in more than one subsection enables the reader to find complete and comprehensive information in each subsection rather than being required to follow potentially confusing cross-references. Additionally, each of the subsections begins with *possession* offenses (relatively less serious) and moves to the more serious *use* and *distribution* offenses.

Overview of the Drug Control Act of 1970

§54.1-3400 through §54.1-3456, Code of Virginia

Schedule I Drug:

opiates or opium derivatives, such as ecstasy, heroin, morphine, codeine, hallucinogenic substances, liquid marijuana, liquid hashish, LSD, peyote, psilocybin (“mushrooms”), qualone, for example.

A drug classified in Schedule I has a high potential for abuse *and* has no accepted medical use, or lacks safety for use in treatment. (§54.1-3446)

Schedule II Drug:

granulated or powdered cocaine, raw opium, codeine, morphine, PCP (“Killer Weed”; “Angel Dust”).

A drug classified in Schedule II: (1) Is a substance with a *high potential for abuse*; (2) Currently has an *accepted medical use* in treatment in the United States or currently has an accepted medical use with *severe restrictions*; and (3) May lead to *severe psychological or physical dependence* if the drug is abused. (§54.1-3447-48)

Schedule III Drug:

anabolic steroids, narcotics, chlorhexadol, for example.

A drug classified in Schedule III has a high potential for abuse, but less than the substances listed in Schedules I and II. (§54.1-3449; §54.1-3450)

Schedule IV Drug:

barbital, lorazepam, diazepam, depressants, Rohypnol (“ruffies” - a “date rape” drug)

A drug classified in Schedule IV: (1) Has a *low* potential for abuse relative to the controlled substances listed in Schedule III; (2) Currently has an accepted medical use in treatment in the United States; (3) May lead to a *limited* psychological or physical dependence relative to the controlled substances listed in Schedule III. (§54.1-3451; §54.1-3452)

Schedule V Drug:

depressants, stimulants, narcotics also used for their medicinal properties

A drug classified in Schedule V: (1) Has a *low* potential for abuse relative to the controlled substances listed in Schedule IV; (2) Is currently accepted for medical use in treatment in the United States. (3) May lead to *limited* psychological and physical dependence relative to the controlled substances listed in Schedule IV (§54.1-353; §54.1-354).

Schedule VI Drug:

Schedule VI includes any stimulant or depressant drug exempted from Schedules III, IV or V; every drug not included in Schedules I through V; and any drug not included in Schedules I through V. (§54.1-3455)

Penalties

Possession of a controlled substance (illegal drug) is unlawful §18.2-250

Any person who violates this section with respect to controlled substances classified:

- ◆ In Schedule I or Schedule II of the Drug Control Act, §54.1-3400 is guilty of a Class 5 felony;
- ◆ In Schedule III is guilty of a Class 1 misdemeanor;
- ◆ In Schedule IV is guilty of a Class 2 misdemeanor (except Rohypnol, a Schedule I penalty);
- ◆ In Schedule V is guilty of a Class 3 misdemeanor;
- ◆ In Schedule VI is guilty of a Class 4 misdemeanor.

Update Reports of Certain Acts to School Authorities

§22.1-279.3:1

A. Reports shall be made to the principal or his designee on all incidents involving (i) the assault, assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a school bus, on school property, or at a school-sponsored activity; (ii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, **including the theft or attempted theft of student prescription medications**; (iii) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity; (iv) the illegal carrying of a firearm onto school property; (v) any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in [§18.2-85](#), or explosive or incendiary devices, as defined in [§18.2-433.1](#), or chemical bombs, as described in [§18.2-87.1](#), on a school bus, on school property, or at a school-sponsored activity; or (vi) any threats or false threats to bomb, as described in [§18.2-83](#), made against school personnel or involving school property or school buses.

Reporting alcohol and drug offenses to law enforcement authorities:

§22.1-279.3:1(A)*, **Code of Virginia** requires reporting of

(ii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity;

* §22.1-280.1 was repealed. This section takes its place.

◆ IV. ALCOHOL, TOBACCO AND OTHER DRUG-RELATED OFFENSES

Persons charged with first-time drug offense §18.2-251

- ◆ Persons charged with their first drug offense may be placed on probation under the conditions of drug screening, evaluation, educational programs, drug tests, costs and fees, visitations, and discharge.

Distribution of certain drugs to persons under eighteen prohibited §18.2-255A

Key Elements

It is unlawful for a person who is at least eighteen years of age to knowingly or intentionally:

- ◆ Distribute any drug classified in Schedules I, II, III or IV, or marijuana to any person who is under eighteen years of age who is at least three years younger than the older person.
- ◆ It is also unlawful for a person at least eighteen years of age to knowingly or intentionally cause any person under eighteen years of age who is at least three years younger than the older person, to *assist* in such distribution of any drug classified in Schedules I, II, III or IV or marijuana.

Penalty

- ◆ 10 to 50 years in prison plus fine up to \$100,000.

Imitation Drugs §18.2-255B

Key Elements

- ◆ It is unlawful for any person at least eighteen years of age to knowingly or intentionally to distribute any *imitation* controlled substance to any person under eighteen years of age who is at least three years younger than the older person; or to
- ◆ Cause any person under eighteen years of age who is at least three years younger than the older person to assist in such distribution of any imitation controlled substance.

Penalty

- ◆ Class 6 felony

Forfeiture of driver's license for drug law violations §18.2-259.1

- ◆ A person shall lose the privilege to drive for a period of six months from a conviction or placement on probation under §18.2-251 if he or she is charged with a drug offense. Under compelling circumstances, the person may drive based upon exceptions, including the need to travel to and from school if the person is a student and to work or medically necessary travel, and provides written verification of enrollment to a court.

Revocation of driver's license for conviction of drug offenses or deferral of proceedings §46.2-390.1

- ♦ A juvenile's driver's license shall be revoked for a period of six months following the date of conviction if he or she has been found guilty of violations under §18.2-247 (drug laws) or any similar state or federal law, or county, city or town ordinance.

Expulsion of students for certain drug offenses §22.1-277.08*

A. School boards shall expel from school attendance any student whom such school board has determined, in accordance with the procedures set forth in §22.1-277, to have brought a controlled substance, imitation controlled substance, or *marijuana as defined in §18.2-247* onto school property or to a school-sponsored activity. A school board may, however, determine, based on the facts of the particular case, that special circumstances exist and another disciplinary action is appropriate. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in §22.1-277.

B. Each school board shall revise its standards of student conduct to incorporate the requirements of this section no later than three months after the date on which this act becomes effective.



Related Reading

Update "Drug Testing of Student Athletes." In *Creating Safe and Drug-Free Schools: An Action Guide* (1997). U. S. Department of Education and U. S. Department of Justice. Available Online at:
<http://www.ed.gov/offices/OESE/SDFS/actguid/index.html>

* §22.1-277.01:1 was repealed. This section takes its place.

◆ IV. ALCOHOL, TOBACCO AND OTHER DRUG-RELATED OFFENSES

School-Related Provisions

Immunity of school personnel investigating or reporting alcohol or drug use §8.01-47

- ◆ Civil immunity extends to any teacher, instructor, principal, school administrator, school coordinator, guidance counselor or any other professional administrative community or clerical staff member or other personnel of any elementary or secondary school or institution of higher learning who in *good faith*, with *reasonable cause* and *without malice* acts to report, investigate or cause any investigation to be made into activities of any student related to alcohol or drug abuse.
- ◆ The school official is immune from all civil liability that could come from making such a report, investigation or disclosure of activities.

Prohibiting the sale of drugs on or near a school zone §18.2-255.2

Key Elements

It shall be unlawful for any person to:

- ◆ Manufacture, sell or distribute or possess;
- ◆ With intent to sell, give or distribute any controlled substance, imitation controlled substance or marijuana at any time;
- ◆ While on elementary or secondary school grounds, including building and grounds, upon public school property, or on any school bus.
- ◆ Or any property open for public use within 1,000 feet of such school property.

School bus stops are added to drug-free school zones: It shall be unlawful . . . while (iv) upon a school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity.

Penalty

- ◆ 1 to 5 years in prison plus fine of up to \$100,000

Drinking or possession of alcohol on school grounds §4.1-309

Key Elements

- ◆ No person shall possess, drink or serve alcohol in or upon school grounds, during or after school hours or during school-sponsored activities. (An exception exists for religious groups or activities that involve alcohol.)

Penalty

- ◆ Class 2 misdemeanor

School-Related Provisions (cont'd)

Statewide regulations of smoking

§15.1-2801*

- ◆ Smoking is prohibited in elevators, public school buses, the interior of *any* public elementary, intermediate, or secondary school.
- ◆ However, smoking may be allowed by a local school division in a designated area which is not a common area, including but not limited to a classroom, library, hallway, restroom, cafeteria, gymnasium, or auditorium after regular school hours.
- ◆ So long as all student activities in the building have been concluded.
- ◆ The proprietor or other person in charge of an educational facility, *except* any public elementary, intermediate, or secondary school shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building.
- ◆ ***The proprietor or other person in charge of a space subject to the provisions of this chapter shall post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking," and in restaurants, signs conspicuous to ordinary public view at or near each public entrance stating "No-Smoking Section Available." Any person failing to post such signs may be subject to a civil penalty of not more than twenty-five dollars.***

Any person who continues to smoke in a designated no-smoking area after having been asked to refrain from smoking may be subject to a civil penalty of not more than twenty-five dollars.

*§15.1-291.2 was repealed. This section takes its place.

Alcohol-Related Offenses

Drinking or possession of alcohol on school grounds §4.1-309

Key Elements

- ◆ No person shall possess, drink or serve alcohol;
- ◆ In or upon school grounds, during or after school hours or during school-sponsored activities. (An exception exists for religious groups or activities that involve alcohol.)

Penalty

- ◆ Class 2 misdemeanor

Delinquent children: loss of driving privileges for alcohol, firearm and drug offenses, *truancy* §16.1-278.9

Key Elements and Penalties

- ◆ Child is at least thirteen years old at the time of the offense;
- ◆ Child is delinquent and violated either §4.1-309 (possession of alcohol on school grounds) or the statute on unlawful possession of a handgun; the court shall order that the child's driver's license be denied for six months.
- ◆ If the child is under age sixteen, the privilege to apply for a license shall be delayed until a period of six months after the child's sixteenth birthday.
- ◆ But if a child possesses a semiautomatic weapon, the denial of a driver's license shall be delayed for a period of two years following the child's sixteenth birthday.
- ◆ A child who already has a driver's license shall be ordered to surrender it.

Maiming, etc. of another resulting from driving while intoxicated. §18.2-51.4

Key Elements and Penalties

- ◆ A person who unintentionally causes serious bodily injury to another when driving while intoxicated and whose conduct shows reckless disregard for human life is guilty of a Class 6 felony.
- ◆ Ancillary penalties which attach upon a DUI conviction also apply (e.g., license suspension, liability for accident reimbursement, administrative license revocation).
- ◆ The person may participate in Virginia Alcohol Safety Action Program (VASAP), and if a first offender, may be issued a restricted license to drive.

Alcohol-Related Offenses (cont'd)

Operation of motor vehicle by habitual offender

§46.2-357

Driving while intoxicated while under the declaration of habitual offender is punishable as a felony (1 to 5 years).



Related Reading

Community How to Guide on Underage Drinking Prevention. Available from JoinTogether Online at

Update <http://www.jointogether.org/sa/resources/database/reader/0,1884,267052,00.html>
Prevention Works! Targeting Impaired Driving Among Youth. Prevention Alert, vol. 3

(10). February 2000. Available at <http://www.health.org/govpubs/prevalert/v3i10.htm>

Alcohol, Drug Use Influence School Performance. (2002). By Christie Vaughn.

Available at The NCADI Reporter <http://www.health.org/newsroom/rep/185.htm>

Related Local School Board Policy

Drug-Related Offenses

Possession

Possession of a controlled substance (illegal drug) is unlawful. §18.2-250

Any person who violates this section with respect to controlled substances classified:

- ◆ In Schedule I or Schedule II of the Drug Control Act, §54.1-3400 is guilty of a Class 5 felony;
- ◆ In Schedule III is guilty of a Class 1 misdemeanor;
- ◆ In Schedule IV is guilty of a Class 2 misdemeanor (except Rohypnol, a Schedule I penalty);
- ◆ In Schedule V is guilty of a Class 3 misdemeanor;
- ◆ In Schedule VI is guilty of a Class 4 misdemeanor.

Persons charged with first-time drug offense §18.2-251

Persons charged with their first drug offense may be placed on probation under the conditions of drug screening, evaluation, educational programs, drug tests, costs and fees, visitations, and discharge.

Forfeiture of driver's license for drug law violations §18.2-259.1

- ◆ A person shall lose the privilege to drive for a period of six months from a conviction or placement on probation under §18.2-251 if he or she is charged with a drug offense. Under compelling circumstances, the person may drive based upon exceptions, including the need to travel to and from school if the person is a student and provides written verification of enrollment to a court.

Revocation of driver's license for conviction of drug offenses or deferral of proceedings §46.2-390.1

- ◆ A juvenile's driver's license shall be revoked for a period of six months following the date of conviction if he or she has been found guilty of violations under §18.2-247 (drug laws) or any similar state or federal law, or county, city or town ordinance.

Drug-Related Offenses (continued)

Distribution of certain drugs to persons under eighteen prohibited
§18.2-255A

Key Elements

It is unlawful for a person who is at least eighteen years of age to knowingly or intentionally:

- ◆ Distribute any drug classified in Schedules I, II, III or IV, or marijuana to any person who is under eighteen years of age who is at least three years younger than the older person.
- ◆ It is also unlawful for a person at least eighteen years of age to knowingly or intentionally cause any person under eighteen years of age who is at least three years younger than the older person, to *assist* in such distribution of any drug classified in Schedules I, II, III or IV or marijuana.

Penalty

- ◆ 10 to 50 years in prison plus fine up to \$100,000.

Imitation Drugs **§18.2-255B**

Key Elements

- ◆ It is unlawful for any person at least eighteen years of age to knowingly or intentionally to distribute any *imitation* controlled substance to any person under eighteen years of age who is at least three years younger than the older person; or to
- ◆ Cause any person under eighteen years of age who is at least three years younger than the older person to assist in such distribution of any imitation controlled substance.

Penalty

- ◆ Class 6 felony



Related Reading

Prevention Works! Club Drugs: Ecstasy. Prevention Alert, vol. 3 (25). July 2000. Available at

<http://www.health.org/govpubs/prevalert/v3i25.htm>

Update

Tips for Teens: The Truth About Ecstasy. The National Clearinghouse for

Alcohol and Drug Information: SAMSHA. Prevline.

<http://www.health.org/govpubs/phd852/index.htm>

Related Local School Division Policy

◆ IV. ALCOHOL, TOBACCO AND OTHER DRUG-RELATED OFFENSES

Drug-Related Offenses (continued)

Possession of marijuana unlawful

§18.2-250.1

Key elements

- ◆ It is unlawful to have knowing and intentional possession of marijuana,
- ◆ Except with a valid prescription or order from a practitioner.

Penalty

- ◆ First violation is a fine of not more than \$500 or not more than thirty days in jail, either or both. Second violation a Class 1 misdemeanor.
- ◆ Loss of driving license for 6 mos.



Related Reading

National Conference on Marijuana Use: Prevention, Treatment, and Research Highlights. (1996). National Institute on Drug Abuse.

Marijuana: Facts Parents Should Know. (1996). National Institute on Drug Abuse.

Update Tips for Teens: The Truth About Marijuana. The National Clearinghouse for Alcohol and Drug Information: SAMHSA. Prevline. <http://www.health.org/govpubs/PHD641/>

Marijuana and Hashish Use. The National Clearinghouse for Alcohol and Drug Information: SAMHSA. <http://www.health.org/govstudy/bkd332/3marij.htm>

Local School Division Policy

Drug-Related Offenses (continued)

Illegal stimulants and steroids §18.2-248.5

Key Elements

1. It is unlawful for any person to knowingly manufacture, sell, give, or distribute any anabolic steroid.
2. It is also unlawful to possess anabolic steroids with intent to manufacture the drug.
3. It is unlawful for any person to knowingly sell or distribute to a minor, any capsule or tablet containing caffeine and ephedrine sulfate without a prescription.

Penalty

- ♦ # 1 and #2 above are felonies; penalty 1 to 10 years in prison
- ♦ #3 is a misdemeanor



Related Reading

Steroids and Other Ergogenic Aids: A Resource Guide (1993). Available from the Virginia Department of Education, Safe and Drug-Free Schools and Communities Program.

Update Prevention Works! Club Drugs: GHB, An Anabolic Steroid. Prevention Alert, vol. 3 (27). August 2000. Available at <http://www.health.org/govpubs/prevalert/v3i27.htm>

Tips for Teens: The Truth About Steroids. The National Clearinghouse for Alcohol and Drug Information: SAMHSA. Prevline. <http://www.health.org/govpubs/PHD726/>

Related Local School Division Policy

◆ IV. ALCOHOL, TOBACCO AND OTHER DRUG-RELATED OFFENSES

Drug-Related Offenses (continued)

Inhaling drugs or other noxious chemical substances or causing others to do so §18.2-264

Key Elements

A. It shall be unlawful, except under the direction of a practitioner as defined in §54.1-3401, for any person deliberately to smell or inhale any drugs or any other noxious chemical substances including but not limited to fingernail polish or model airplane glue, containing any ketones, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors, with the intent to become intoxicated, inebriated, excited, stupefied or to dull the brain or nervous system.

B. It shall be unlawful for any person, other than one duly licensed, deliberately to cause, invite or induce any person to smell or inhale any drugs or any other noxious substances or chemicals containing any ketone, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors with the intent to intoxicate, inebriate, excite, stupefy or to dull the brain or nervous system of such person.

Penalty

- ◆ Any person who violates subsection A shall be guilty of a Class 1 misdemeanor.
- ◆ Any person who violates subsection B shall be guilty of a Class 2 misdemeanor.



Related Reading

Update

Tips for Teens: The Truth About Inhalants. The National Clearinghouse for Alcohol and Drug Information: SAMHSA. Available at

<http://www.health.org/govpubs/PHD631/>

Inhalant Use Among Youth. The National Clearinghouse for Alcohol and Drug Information: SAMHSA. Available at

<http://www.health.org/govstudy/shortreports/inhalNS/default.htm>

Related Local School Board Policy

Drug-Related Offenses (continued)

Drug paraphernalia defined §18.2-265.1

Drug paraphernalia is defined as:

All equipment, products and materials of any kind which are designed for use or which are intended by the person charged with violating §18.2-265.3 (penalties for the sale of paraphernalia) for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, strength testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or introducing into the human body marijuana or a controlled substance.

Drug paraphernalia includes: kits, bongs, scales, separation gins, roach clips, needles and syringes, containers, balloons, ceramic pipes, bowls and spoons.

Possession or distribution of controlled paraphernalia; meaning of controlled paraphernalia; evidence; §54.1-3466

Key Elements and Penalties

It is a misdemeanor for any person to do the following:

- ♦ Possess or distribute *controlled paraphernalia* which means a hypodermic syringe, needle or other instrument for injecting controlled substances under circumstances indicating intent to use manufacture, or distribute controlled substances.

Evidence of such circumstances includes the following:

- ♦ Close proximity of the controlled paraphernalia to any equipment or adulterants commonly used in illegal manufacture or distribution;
- ♦ Equipment includes scales, sieves, strainers, measuring spoons, staples, staplers, procaine hydrochloride, mannitol, lactose, quinine, or any controlled drug or machine or production device.

Penalty

- ♦ Class 1 misdemeanor

Seizure and forfeiture of drug paraphernalia §18.2-265.4

- ♦ All drug paraphernalia may be seized and disposed of but only according to a formal procedure involving the courts and law-enforcement officers set forth in §18.2-253.

◆ IV. ALCOHOL, TOBACCO AND OTHER DRUG-RELATED OFFENSES

Drug-Related Offenses (continued)

Penalties for the sale of drug paraphernalia §18.2-265.3

Key Elements and Penalties

- ◆ Any person who sells or possesses with intent to sell drug paraphernalia, knowing that it is designed for use by a person to illegally use or handle marijuana or other controlled substance is guilty of a Class 1 misdemeanor.
- ◆ Anyone eighteen years of age or older who violates this section by intentionally selling drug paraphernalia or possessing with the intent to sell paraphernalia to a minor who is at least three years junior to the accused in age is guilty of a Class 6 felony.
- ◆ Any person eighteen years of age or older who distributes drug paraphernalia to a minor is guilty of a Class 1 misdemeanor.

Distribution, sale or display of printed material advertising instruments for use in administering marijuana or controlled substances to minors §18.2-255.1

Key Elements

- ◆ It is unlawful to knowingly sell, distribute or display for sale to a minor.
- ◆ Any book, pamphlet, periodical, or other printed material which he or she knows advertises for unlawfully ingested smoke, administering, preparing or growing marijuana or a controlled substance.

Penalty

- ◆ Class 1 misdemeanor

Related Local School Board Policy

Tobacco-Related Offenses

Prohibiting purchase or possession of tobacco products by minors or sale of tobacco products to minors §18.2-371.2

Key Elements

- ◆ No person shall sell, distribute to, purchase for, or knowingly permit the purchase by any person less than eighteen years of age any tobacco product including but not limited to cigarettes and cigars.
- ◆ No tobacco products may be sold in a vending machine, unless the machine has a conspicuous sign posted on it, indicating that it is unlawful for minors to purchase or possess tobacco.
- ◆ Cigarettes shall be sold only in sealed packages provided by the manufacturer with the required health warning.
- ◆ No person shall *operate* a vending machine dispensing tobacco products unless the machine is located in: (1) A place not open to the public *and* not generally accessible to minors; or (2) A place that *is* open to the public and the vending machine is at least ten feet from any public entrance.
- ◆ No person less than eighteen years of age shall purchase or possess any tobacco product including cigarettes and cigars. This rule does not apply to possession by minors who are employed as tobacco delivery persons.

Tobacco is not to be sold to any person unless that individual demonstrates that he or she is at least eighteen years of age by showing a driver's license or other government-issued photo identification. (Such identification is not required if the seller either knows or has reason to believe the buyer of a tobacco product is at least eighteen years of age.)

Update* Statewide regulations of smoking §15.1-2801

Key Elements

- ◆ Smoking is prohibited in elevators, public school buses, ***any part of the interior of any public elementary, intermediate, or secondary school.***
- ◆ The proprietor or other person in charge of an educational facility, *except* any public elementary, intermediate, or secondary school shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building.
- ◆ ***The proprietor or other person in charge of a space subject to the provisions of this chapter shall post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking," and in restaurants, signs conspicuous to ordinary public view at or near each public entrance stating "No-Smoking Section Available." Any person failing to post such signs may be subject to a civil penalty of not more than twenty-five dollars.***

Penalty

- ◆ Any person who continues to smoke in a designated no-smoking area after having been asked to refrain from smoking may be subject to a civil penalty of not more than twenty-five dollars.

* §15.1-291.2 was repealed. This section takes its place.

◆ IV. ALCOHOL, TOBACCO AND OTHER DRUG-RELATED OFFENSES

Tobacco-Related Offenses (continued)



Related Reading

Update *Guidelines for School and Community Programs: Preventing Tobacco Use and Addiction.* Center for Disease Control. Available at <http://www.cdc.gov/nccdphp/dash/guidelines/ptuaaag.htm>

V. RELATED TOPICS AND ISSUES

Section V. includes information on a variety of subjects which are based in law. Brief descriptive information is provided as well as sources of additional information. The intent of this section is to provide information rather than to provide specific guidance for particular incidents. Consultation with the school board attorney is advised in any circumstance not covered by explicit school board policy.

Topics and issues in this section include:

- Alternative Education
- Child Abuse and Neglect
- Community Services Board
- Comprehensive Services Act
- Corporal Punishment
- Discipline - General Provisions and Due Process
- Discipline - Suspension/Expulsion
- Discipline - Students with Disabilities (IDEA)
- Disruptive Behavior
- Emancipation of Minors
- School Safety Audits
- Gangs
- Law-Related Education
- School Safety
 - Crime, Violence, and Substance Abuse Reporting
 - Crime Line
 - Crisis and Emergency Management Planning
 - Gun-Free Schools Act
 - Parent Responsibility and Involvement
 - School Safety Audits
- Search and Seizure
- Sexual Offenses
- Suicide Intervention
- Uniforms
- Victim's Rights

Alternative Education

Update §22.1-277.2:1. Disciplinary authority of school boards under certain circumstances; alternative education program.*

A. A school board may, in accordance with the procedures set forth in §22.1-277, require any student who has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; ***(ii) found guilty or not innocent of an offense relating to the Commonwealth's laws on weapons, alcohol, or drugs, or of a crime that resulted in or could have resulted in injury to others, or for which the disposition ordered by a court is required to be disclosed to the superintendent of the school division pursuant to § 16.1-305.1; (iii) found to have committed a serious offense or repeated offenses in violation of school board policies; (iv) suspended pursuant to §22.1-277.05; or (v) expelled pursuant to §§22.1-277.06, §22.1-277.07, or §22.1-277.08, or subsection B of §22.1-277, to attend an alternative education program.*** A school board may require such student to attend such programs regardless of where the crime occurred. ***School boards may require any student who has been found, in accordance with the procedures set forth in this article, to have been in possession of, or under the influence of, drugs or alcohol on a school bus, on school property, or at a school-sponsored activity in violation of school board policies, to undergo evaluation for drug or alcohol abuse, or both, and, if recommended by the evaluator and with the consent of the student's parent, to participate in a treatment program.***

As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

B. A school board may adopt regulations authorizing the division superintendent or his designee to require students to attend an alternative education program consistent with the provisions of subsection A after (i) written notice to the student and his parent that the student will be required to attend an alternative education program and (ii) notice of the opportunity for the student or his parent to participate in a hearing to be conducted by the division superintendent or his designee regarding such placement. The decision of the superintendent or his designee regarding such alternative education placement shall be final unless altered by the school board, upon timely written petition, as established in regulation, by the student or his parent, for a review of the record by the school board.

For the purposes of this section, the superintendent's designee shall be a (i) trained hearing officer or (ii) professional employee within the administrative offices of the school division who reports directly to the division superintendent and who is not a school-based instructional or administrative employee.

*§22.1-357 was repealed. This section takes its place.

Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article. §22.1-254.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and
2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. A school board may excuse from attendance at school:

1. On recommendation of the principal and the division superintendent and with the written consent of the parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school; and
2. On recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

D. Local school boards may allow the requirements of subsection A of this section to be met under the following conditions:

For a student who is at least sixteen years of age, there shall be a meeting of the student, the student's parents, and the principal or his designee of the school in which the student is enrolled in which an individual student alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which plan must include:

- a. Career guidance counseling;
- b. Mandatory enrollment and attendance in a general educational development (GED) preparatory program or other alternative education program approved by the local school board with attendance requirements that provide for reporting of student attendance by the chief administrator of such GED preparatory program or approved alternative education program to such principal or his designee;
- c. Counseling on the economic impact of failing to complete high school; and
- d. Procedures for re-enrollment to comply with the requirements of subsection A of this section.

◆ V. RELATED TOPICS AND ISSUES

Update A student for whom an individual student alternative education plan has been granted pursuant to this subsection and who fails to comply with the conditions of such plan shall be in violation of the compulsory school attendance law, ***and the division superintendent or attendance officer of the school division in which such student was last enrolled shall seek immediate compliance with the compulsory school attendance law as set forth in this article.***

Update Students enrolled with an individual student alternative education plan shall be counted in the average daily membership of the school division.

Update E. A school board may, in accordance with the procedures set forth in Article 3 (§ [22.1-276.01](#) et seq.) of Chapter 14 of this title and upon a finding that a school-age child has been ***(i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime that resulted in or could have resulted in injury to others, or for which the disposition ordered by a court is required to be disclosed to the superintendent of the school division pursuant to § [16.1-305.1](#); (iii) suspended pursuant to §[22.1-277.05](#); or (iv) expelled from school attendance pursuant to §[22.1-277.06](#) or §[22.1-277.07](#) or subsection B of §[22.1-277](#), require the child to attend an alternative education program as provided in §[22.1-209.1:2](#) or §[22.1-277.2:1](#).***

F. Whenever a court orders any pupil into an alternative education program offered in the public schools, the local school board of the school division in which the program is offered shall determine the appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its school division.

The juvenile and domestic relations district court of the county or city in which a pupil resides or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§[18.2-77](#) et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other education program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§[22.1-277](#), [22.1-277.01](#), and [22.1-277.2](#). As used in this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

Child Abuse and Neglect

Definition

According to §16.1-228, ***Code of Virginia***, “abused and neglected child” means any child:

1. Whose parents or other persons responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates substantial risk of death, disfigurement or impairment or bodily or mental functions;
2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;
3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child’s parent, guardian, legal custodian or other person standing in loco parentis.

Update Family assessment by local departments §63.1-248.6:02

Effective July 1, 2002

A. When a local department has been designated as a child protective services differential response system participant by the Department pursuant to [§63.1-248.2:1](#) and responds to the report or complaint by conducting a family assessment, the local department shall:

1. Conduct an immediate family assessment and, if the report or complaint was based upon one of the factors specified in subsection A1 of [§63.1-248.3](#), the department may file a petition pursuant to [§16.1-241.3](#);
2. Immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written ***and an oral*** explanation of the family assessment procedure. The family assessment shall be in writing and shall be completed in accordance with Board regulation;
3. Complete the family assessment within forty-five days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total of sixty days;
4. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family. ***Families have the option of declining the services offered as a result of the family assessment. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to***

◆ V. RELATED TOPICS AND ISSUES

redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services;

5. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;

6. Make no disposition of founded or unfounded for reports in which a family assessment is completed. ***Reports in which a family assessment is completed shall not be entered into the central registry contained in §63.1-248.8;*** and

7. Commence an immediate investigation, if at any time during the completion of the family assessment, the local department determines that an investigation is required.

Reporting Requirements

According to §63.1-248.3, *Code of Virginia*,

When and where to report

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect hotline:

Who must report

1. Any person licensed to practice medicine or any of the healing arts,
2. Any hospital resident or intern, and any person employed in the nursing profession,
3. Any person employed as a social worker,
4. Any probation officer,
5. Any teacher or other person employed in a public or private school, kindergarten or nursery school,
6. Any person providing full-time or part-time child care for pay on a regularly planned basis,
7. Any duly accredited Christian Science practitioner,
8. Any mental health professional,
9. Any law-enforcement officer,
10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,
11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment, and
12. Any person associated with or employed by any private organization responsible for the care, custody or control of children.

Update

13. ***Any person who is designated a court-appointed special advocate pursuant to Article 5 (§9.1-151 et seq.) of Chapter 1 of Title 9.1.***

Reporting of suspected abuse by DSS employee

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and domestic relations district court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation; or, if the judge believes that no local department of social services within a reasonable geographic

distance can be impartial in investigating the reported case, the judge shall assign the report to the court service unit of his court for investigation. The judge may consult with the State Department of Social Services in selecting a local department to conduct the investigation.

Reporting to designee permitted

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

Disclosure of all information, records

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services. The person required to make the report shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department investigating the reported case of child abuse or neglect any records or reports which document the basis for the report.

Penalty for failure to report

- B. Any person required to file a report pursuant to subsection A of this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

Immunity of person making report, etc. from liability. §63.1-248.5

Any person making a report pursuant to §63.1-248.3, a complaint pursuant to §63.1-248.4, or who takes a child into custody pursuant to §63.1-248.9, or who participates in a judicial proceeding resulting therefrom shall be immune from any civil or criminal liability in connection therewith, unless it is proved that such person acted in bad faith or with malicious intent.

Falsely Reporting Child Abuse §63.1-248.5:1.01

- ♦ Any person fourteen years of age or older who makes or causes to be made a report of child abuse or neglect pursuant to this chapter which he knows to be false shall be guilty of a Class 1 misdemeanor. Anyone subsequently convicted under this subsection shall be guilty of a Class 6 felony.
- ♦ The child protective services records regarding the person who was alleged to have committed abuse or neglect which result from a report for which a conviction is obtained under this section shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of such conviction. After purging the records, the custodian shall notify the person in writing that such records have been purged.

◆ V. RELATED TOPICS AND ISSUES

Definitions §16.1-228.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them then residing in the same home with the person.



Related Reading

Update

The Virginia Department of Social Services Website. Available Online at <http://www.dss.state.va.us>

Community Services Boards

§§37.1-197, 197.1 and 198, *Code of Virginia* specify the legal responsibilities of CSBs

Community Services Boards (CSBs) are the local government agencies responsible for mental health, mental retardation and substance abuse services for citizens in their communities. The services are provided through a broad and diverse network of CSBs in their directly-operated and contractual programs. Forty CSBs provide some services in every city and county in Virginia.

CSBs offer varying combinations of six core services:

- ◆ emergency services (mandated)
- ◆ local inpatient services
- ◆ outpatient and case management services
- ◆ day support services
- ◆ residential services
- ◆ prevention and early intervention services (mandated)

CSBs exist to provide individual, flexible, effective, integrated and efficient services in the most accessible and appropriate, yet least restrictive settings possible. They draw upon available resources along with people's natural support systems (family, friends, work) to ameliorate the effects of mental disabilities and substance abuse, encourage growth and development, and assist individuals to realize their maximum potentials. CSBs also enable individuals with mental disabilities or substance abuse problems to assess services in state mental health and mental retardation facilities through pre-admission screening, case management, and client services management.

CSBs are guided and administered by boards of directors with statutory management authority and responsibilities. Members of boards of directors for CSBs are appointed by city councils and boards of supervisors that establish the CSBs.



Related Reading

Update

Virginia Association of Community Services Boards Website. Available Online at <http://www.vacsb.org>

Comprehensive Services Act

Comprehensive Services Act Code Sections Effective October 1, 2001 (§2.2-212, §2.2-2648, §2.2-2649, and §§2.2-5200 – 2.2-5214)*

The Comprehensive Services Act (CSA) was enacted by the Virginia General Assembly in 1992 following an extensive study of community services for youth and families in the Commonwealth. The Act was intended “to create a collaborative system of services and funding that is child-centered, family-focused, and community-based to address the ***strengths and*** needs of troubled and at-risk youth and their families. . .” The Act further states that the law shall be interpreted and construed so as to. . .

1. Ensure that services and funding are consistent with the Commonwealth’s policies of preserving families and providing appropriate services to the least restrictive environment, while protecting the welfare of children and maintaining the safety of the public;
2. Identify and intervene early with ***young*** children and their families who are at risk of developing emotional or behavioral problems, or both, due to environmental, physical or psychological stress;
3. Design and provide services that are responsive to the unique and diverse strengths and needs of troubled youths and families;
4. Increase interagency collaboration and family involvement in service delivery and management;
5. Encourage a public and private partnership in the delivery of services to troubled and at-risk youth and their families; and
6. Provide communities flexibility in the use of funds and to authorize communities to make decisions and be accountable for providing services in concert with these purposes (***§2.2-5200, Code of Virginia***).

At the local level there are two teams:

The community policy and management team (CPMT) coordinates agency efforts, manages the available funds, and sees that eligible youths and their families get help.

The family assessment and planning team (FAPT) looks at the strengths and needs of individual youth and their families, decides what services to provide, and prepares a service plan for each family.

*§2.1-745 - 759 were repealed. This section takes its place.

Comprehensive Services Act (continued)

Both teams include staff members from community services boards (CSB), court service units (CSU), departments of health and social services, the local school division, and private service providers as well as parents. In some localities these teams go by different names and may also include other members.



Related Reading

Update

SUPTS. MEMO No. 95 (May 24, 1996). The Comprehensive Services Act, Special Education Students and the Least Restrictive Environment.

Comprehensive Services Act Website. Available online at

<http://www.csa.state.va.us>



Related Local School Board Policy

Corporal Punishment

§22.1-279.1 Corporal punishment prohibited

“Corporal punishment” is “the infliction or causing the infliction of physical pain on a student as a means of discipline.”

- ◆ No teacher or principal or any public employee shall subject a student to corporal punishment.
- ◆ But corporal punishment does *not* include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable and necessary physical contact or other actions designed to maintain order and control as permitted in this section.
- ◆ Corporal punishment does *not* include reasonable force through the participation in interscholastic sports, practices or competition, or through participation in physical education or an extracurricular activity.

Reasonable and necessary force may be used:

- ◆ To quell a disturbance;
- ◆ To remove a student from the scene of a disturbance which threatens physical injury or damage to persons or property;
- ◆ To prevent a student from hurting himself or herself;
- ◆ For a teacher's, principal's, or school employee's self-defense or for the defense of others;
- ◆ To obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia which are upon the person of the student or within the student's control.

Civil immunity for teachers under certain circumstances

§8.01-220.1:2

A. Any teacher employed by a local school board in this Commonwealth shall not be liable for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct.

B. This section shall not be construed to limit, withdraw or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law.

Discipline: General Provisions

The quality of school climate and governance affects the level of safety, violence and disruption in schools. In an analysis of data of the Safe School Study, Gottfredson and Gottfredson (1985) found that schools with clear, explicitly-stated rules that were firmly enforced had less disorder and fewer teachers and students victimized. Teachers were found to be victimized less in schools where there is a high level of cooperation between teachers and administration and there are clear expectations. When teachers were not sure about how school policies were set, or when teachers respond to student misbehavior in ways which were inconsistent or ambiguous, then disruption was found to be relatively high. **The findings suggest that disruption is lower in schools where rules are clear and explicit and where responses to disruptive or delinquent behavior is predictable, consistent, and fair** (p. 173).

Due Process

The Fourteenth Amendment

When public school personnel impose discipline, it is essential that they remember that a student has property and liberty interests under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The clause prohibits a state from depriving “any person of life, liberty or property without due process of law.” Courts have applied this clause to local school boards.

Due Process Requirements

The student has a reasonable expectation to receive oral or written notice of the charges, the rule or rules that he or she allegedly violated particularly in connection with a suspension of ten days or less. **Goss v. Lopez, 419 U.S. 565, 581 (1975)**. The school administration’s responsibility is to provide notice of any violation and a hearing when the student can present his or her side. The student is also entitled to receive a public or private hearing where evidence may be presented against the student or on his behalf. Due process must occur in a *timely* manner. For example, the Board of Education is prohibited from using mediation improperly to delay due process rights of parents and students with disabilities. **Code of Virginia**, §22.1-214. When the Board of Education prescribes procedures to afford due process to children with disabilities and their parents or guardians, it must encourage proper use of mediation in resolving disputes about placements, tuition eligibility, and individualized education programs. **§22.1-214**.

A general rule is that notice and a hearing should precede a student’s expulsion or suspension from school. No waiting period between the student’s alleged violation and the hearing is required. **Broussard v. School Board City of Norfolk, 801 F.Supp. 1526, 1532 (E.D. Va. 1992)**. If a student’s attendance endangers or threatens to disrupt the school environment, notice and a hearing must be afforded “as soon as practicable” or usually within

◆ V. RELATED TOPICS AND ISSUES

72 hours. *Doe v. Rockingham County School Board*, 658 F.Supp. 403, 408 (W.D. Va. 1987). If the expulsion or suspension lasts more than ten days, a student may be entitled to cross-examine adverse witnesses to protect his or her due process rights. . *Goss v. Lopez*, 419 U.S. 565 at 581. However, some disciplinary measures do not require a strict adherence to due process rights, for example, dismissals from individual student activities. *Bernstein v. Menard*, 557 F.Supp. 90 (E.D. Va. 1982).



Related Reading

Update

Virginia Department of Education. (2001). ***Student Conduct Policy Guidelines, 2001 Revisions***. Available online at http://www.pen.k12.va.us/VDOE/Instruction/Sped/stu_conduct.pdf

Related Local School Board Policy

Discipline: Suspension/Expulsion

Suspensions and expulsions of pupils generally §22.1-277

- A. Pupils may be suspended or expelled from attendance at school for sufficient cause.
- B. *Update* Any student for whom the division superintendent of the school division in which such student is enrolled has received a report pursuant to [§16.1-305.1](#) of an adjudication of delinquency or a conviction may be suspended or expelled from school attendance pursuant to this article.
- C. The authority provided in [§22.1-276.2](#) for teachers to remove students from their classes in certain instances of disruptive behavior shall not be interpreted to affect the operation of §§ [22.1-277.04](#), [22.1-277.05](#), or § [22.1-277.06](#).

Update **Short-term suspension; procedures; readmission. §22.1-277.04.**

A pupil may be suspended for not more than ten school days by either the school principal, any assistant principal, or, in their absence, any teacher. The principal, assistant principal, or teacher may suspend the pupil after giving the pupil oral or written notice of the charges against him and, if he denies them, an explanation of the facts as known to school personnel and an opportunity to present his version of what occurred. In the case of any pupil whose presence poses a continuing danger to persons or property, or whose presence is an ongoing threat of disruption, the pupil may be removed from school immediately and the notice, explanation of facts, and opportunity to present his version shall be given as soon as practicable thereafter.

Upon suspension of any pupil, the principal, assistant principal, or teacher responsible for such suspension shall report the facts of the case in writing to the division superintendent or his designee and the parent of the pupil suspended. The division superintendent or his designee shall review forthwith the action taken by the principal, assistant principal, or teacher upon a petition for such review by any party in interest and confirm or disapprove such action based on an examination of the record of the pupil's behavior.

The decision of the division superintendent or his designee may be appealed to the school board or a committee thereof in accordance with regulations of the school board; however, the decision of the division superintendent or his designee shall be final if so prescribed by school board regulations.

The school board shall require that any oral or written notice to the parent of a student who is suspended from school attendance for not more than ten days include notification of the length of the suspension, information regarding the availability of community-based educational programs, alternative education programs or other educational options, and of the student's right to return to regular school attendance

◆ V. RELATED TOPICS AND ISSUES

upon the expiration of the suspension. The costs of any community-based educational program, or alternative education program or educational option, which is not a part of the educational program offered by the school division, shall be borne by the parent of the student.

Update

Long-term suspensions; procedures; readmission.

§22.1-277.05.

A. A pupil may be suspended from attendance at school for more than ten days after providing written notice to the pupil and his parent of the proposed action and the reasons therefore and of the right to a hearing before the school board, or a committee thereof, or the superintendent or his designee, in accordance with regulations of the school board. If the regulations provide for a hearing by the superintendent or his designee, the regulations shall also provide for an appeal of the decision to the full school board. Such appeal shall be decided by the school board within thirty days.

If the regulations provide for a hearing by a committee of the school board, the regulations shall also provide that such committee may confirm or disapprove the suspension of a student. Any such committee of the school board shall be composed of at least three members. If the committee's decision is not unanimous, the pupil or his parent may appeal the committee's decision to the full school board. Such appeal shall be decided by the school board within thirty days.

B. A school board shall include in the written notice of a suspension for more than ten days required by this section, notification of the length of the suspension. In the case of a suspension for more than ten days, such written notice shall provide information concerning the availability of community-based educational, alternative education, or intervention programs. Such notice shall also state that the student is eligible to return to regular school attendance upon the expiration of the suspension or to attend an appropriate alternative education program approved by the school board during or upon the expiration of the suspension. The costs of any community-based educational, alternative education, or intervention program that is not a part of the educational program offered by the school division that the student may attend during his suspension shall be borne by the parent of the student.

Nothing in this section shall be construed to prohibit the school board from permitting or requiring students suspended pursuant to this section to attend an alternative education program provided by the school board for the term of such suspension.

Update

Expulsions; procedures; readmission.

§22.1-277.06.

A. Pupils may be expelled from attendance at school after written notice to the pupil and his parent of the proposed action and the reasons therefor and of the right to a hearing before the school board or a committee thereof in accordance with regulations of the school board.

If the regulations provide for a hearing by a committee of the school board, the regulations shall also provide that such committee may confirm or disapprove the

expulsion of a student. Any such committee of the school board shall be composed of at least three members. If the committee's decision is not unanimous, the pupil or his parent may appeal the committee's decision to the full school board. Such appeal shall be decided by the school board within thirty days.

The regulations shall also provide for subsequent confirmation or disapproval of the proposed expulsion by the school board, or a committee thereof, as may be provided in regulation, regardless of whether the pupil exercised the right to a hearing.

B. The written notice required by this section shall include notification of the length of the expulsion and shall provide information to the parent of the student concerning the availability of community-based educational, training, and intervention programs. Such notice shall state further whether or not the student is eligible to return to regular school attendance, or to attend an appropriate alternative education program approved by the school board, or an adult education program offered by the school division, during or upon the expiration of the expulsion, and the terms or conditions of such readmission. The costs of any community-based educational, training, or intervention program that is not a part of the educational program offered by the school division that the student may attend during his expulsion shall be borne by the parent of the student.

Nothing in this section shall be construed to prohibit the school board from permitting or requiring students expelled pursuant to this section to attend an alternative education program provided by the school board for the term of such expulsion.

If the school board determines that the student is ineligible to return to regular school attendance or to attend during the expulsion an alternative education program or an adult education program in the school division, the written notice shall also advise the parent of such student that the student may petition the school board for readmission to be effective one calendar year from the date of his expulsion, and of the conditions, if any, under which readmission may be granted.

School boards shall establish, by regulation, a schedule pursuant to which such students may apply and reapply for readmission to school. Such schedule shall be designed to ensure that the hearing and ruling on any initial petition for readmission, if granted, would enable the student to resume school attendance one calendar year from the date of the expulsion.

D. Recommendations for expulsion for actions other than those specified in §§[22.1-277.07](#) and [22.1-277.08](#) shall be based on consideration of the following factors:

- 1. The nature and seriousness of the violation;*
- 2. The degree of danger to the school community;*
- 3. The student's disciplinary history, including the seriousness and number of previous infractions;*
- 4. The appropriateness and availability of an alternative education placement or program;*
- 5. The student's age and grade level;*
- 6. The results of any mental health, substance abuse, or special education assessments;*
- 7. The student's attendance and academic records; and*
- 8. Such other matters as he deems appropriate.*

No decision to expel a student shall be reversed on the grounds that such factors were not considered.

◆ V. RELATED TOPICS AND ISSUES

Nothing in this subsection shall be deemed to preclude a school board from considering any of these factors as "special circumstances" for purposes of §§[22.1-277.07](#) and [22.1-277.08](#).

Update

Expulsion of students under certain circumstances; exceptions §22.1-277.07*

A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in this article, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by §[18.2-308.1](#), or to have brought a firearm as defined in subsection D on school property or to a school-sponsored activity. A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation, that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article.

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994, and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

- 1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section; and*
- 2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.*

D. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly

* §22.1-277.01 was repealed. This section takes its place.

suitable for sporting purposes, by whatever name known that will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled.

"Destructive device" shall not include any device that is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to [§18.2-308.1](#), or (i) any weapon, including a starter gun, that will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.

"One year" means 365 calendar days as required in federal regulations.

"School property" means any real property owned or leased by the school board or any vehicle owned or leased by the school board or operated by or on behalf of the school board.

E. The exemptions set out in [§18.2-308](#) regarding concealed weapons shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such.

F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

Update Expulsion of students for certain drug offenses **§22.1-277.08***

A. School boards shall expel from school attendance any student whom such school board has determined, in accordance with the procedures set forth in this article, to have brought a controlled substance, imitation controlled substance, or marijuana as defined in [§18.2-247](#) onto school property or to a school-sponsored activity. A school board may, however, determine, based on the facts of the particular case, that special circumstances exist and another disciplinary action is appropriate. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article.

* §22.1-277.01:1 was repealed. This section takes its place.

◆ V. RELATED TOPICS AND ISSUES

B. Each school board shall revise its standards of student conduct to incorporate the requirements of this section no later than three months after the date on which this act becomes effective.

Disciplinary authority of school boards under certain circumstances; alternative education program §22.1-277.2:1

A. A school board may, in accordance with the procedures set forth in this article, require any student who has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of an offense relating to the Commonwealth's laws on weapons, alcohol, or drugs, or of a crime that resulted in or could have resulted in injury to others, or for which the disposition ordered by a court is required to be disclosed to the superintendent of the school division pursuant to [§16.1-305.1](#); (iii) found to have committed a serious offense or repeated offenses in violation of school board policies; (iv) suspended pursuant to [§22.1-277.05](#); or (v) expelled pursuant to [§§22.1-277.06, 22.1-277.07, or §22.1-277.08](#), or subsection B of §22.1-277, to attend an alternative education program. A school board may require such student to attend such programs regardless of where the crime occurred. School boards may require any student who has been found, in accordance with the procedures set forth in this article, to have been in possession of, or under the influence of, drugs or alcohol on a school bus, on school property, or at a school-sponsored activity in violation of school board policies, to undergo evaluation for drug or alcohol abuse, or both, and, if recommended by the evaluator and with the consent of the student's parent, to participate in a treatment program.

As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

Update

B. A school board may adopt regulations authorizing the division superintendent or his designee to require students to attend an alternative education program consistent with the provisions of subsection A after (i) written notice to the student and his parent that the student will be required to attend an alternative education program and (ii) notice of the opportunity for the student or his parent to participate in a hearing to be conducted by the division superintendent or his designee regarding such placement. The decision of the superintendent or his designee regarding such alternative education placement shall be final unless altered by the school board, upon timely written petition, as established in regulation, by the student or his parent, for a review of the record by the school board.

Admission of expelled students; authority to exclude §22.1-277.2

- ◆ The amendments remove the provision regarding sending written notice of an expulsion to guardians.
- ◆ A clause is added regarding procedures a school board may adopt in lieu of procedures followed when a student presents a danger.
- ◆ Requirements are specified for the superintendent's designee.
- ◆ Local school boards have more authority to exclude students who have been suspended for more than thirty days and private school pupils for whom admissions has been withdrawn.

- ◆ Pupils can only be excluded for violations related to destruction of property, weapons, alcohol, drugs, or for willful infliction of injury to another person.
- ◆ School boards must notify the students who are being excluded within thirty days of any hearing or within fifteen days if the suspension is greater than thirty days.

Community-Based Intervention Program for Suspended and Expelled Students; promulgation of regulations; program eligibility criteria.
§22.1-209.1:9.*

A. With such funds as may be appropriated for the purposes of this section*, there is hereby created the Community-Based Intervention Program for Suspended and Expelled Students (the Program) to provide interim instructional programs, intervention, and supervision for students in the public schools who have been suspended, excluded or expelled from school attendance. The Board shall promulgate regulations for the implementation of the Program which shall provide maximum flexibility to allow such programs to meet the unique needs of such students. The Department of Education shall administer the Program.

B. Any student who has been suspended, excluded or expelled from regular school attendance and has been recommended by the school board for such Program, ordered by a court in the Commonwealth to attend such Program, or enrolled in the Program by a parent shall be eligible to attend the Program. Any student so recommended, ordered, or enrolled in the Program shall be required to attend the Program for the duration of his suspension, exclusion, or expulsion. The Department may establish a fee schedule on a sliding scale based on the parent's ability to pay, in accordance with law and Board regulations. The Department shall grant a waiver for the payment of such fees to any parent or child who cannot afford to pay such costs.

C. On and after July 1, 1999, the Program shall consist of five regional projects located throughout the Commonwealth to provide geographical distribution of such projects. Priority for awarding such grants shall be given to nonprofit, tax-exempt public and private organizations whose programs are designed to serve students who have been removed from regular school attendance pursuant to subsection B. Criteria for awarding such grants shall include, but not be limited to, evidence of (i) a structured and balanced educational program that accommodates the specific needs of eligible students; (ii) licensed or otherwise qualified teachers and appropriate supervisory and support services staff; (iii) joint ventures with business and industry to provide opportunities for vocational training and apprenticeships; (iv) opportunities for computer-assisted learning; (v) the use of attitude and behavior modification; (vi) character education, guidance, and supervision; (vii) a component for working with the parents of such students to assist them in acquiring good parenting skills and supervision of the student; (viii) community support for the program; (ix) networking among educational and community organizations to promote the replication of the program in unserved areas of the Commonwealth; and (x) a review and evaluation component for the program. Grants for all programs shall be awarded on a competitive basis to applicants responding to requests for proposals. Upon appropriation of funds for the purposes of this section, the Board shall issue a request for proposals for projects for the program. Grants shall be awarded by June 1, 2000.

* §22.1-209.1:6 was repealed. This section takes its place.

◆ V. RELATED TOPICS AND ISSUES

D. Eligible programs shall (i) satisfy the criteria for receiving awards pursuant to subsection C; (ii) comply with federal and state laws and regulations prohibiting discrimination; (iii) provide evidence of the nonprofit, tax-exempt status of the public or private organization; (iv) provide for parental participation in and community support for the program; and (v) work cooperatively with local law-enforcement agencies, courts of competent jurisdiction, public schools, business and industry, and community groups and organizations.

Guidelines for school board policies; school board regulations governing student conduct; Board standards for compliance with federal law requiring expulsion under certain circumstances by school board §22.1-279.6

A. The Board of Education shall establish guidelines and develop model student conduct policies to aid local school boards in the implementation of such policies. The guidelines shall include, but not be limited to, (i) criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and expulsion and exclusion, and the procedures to be followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies. In the case of suspension and expulsion, the procedures set forth in §22.1-277 shall be the minimum procedures that the school board may prescribe.

Update B. *School boards shall adopt and revise, in accordance with the requirements of this section, regulations governing student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include, in the regulations governing student conduct, procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning.*

Each school board shall include, in its standards of student conduct, prohibitions against profane or obscene language or conduct.

A school board may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such regulations will be subject.

C. *The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), in accordance with [§22.1-277.07](#), to be effective on July 1, 1995.*

This subsection shall not be construed to diminish the authority of the Board of

Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

Weapons-Related Expulsions

According to the ***Student Conduct Policy Guidelines, 2001 Revisions*** (Virginia Department of Education), a student can be expelled from attendance in a local public school for violation of an offense that may result in an expulsion in accordance with school board policies. With the exception of when a child brings a firearm to school, there is no definition of "expulsion" in the Code. In the case of an offense involving a firearm, the school board must expel the student for a period of at least 365 calendar days unless the school board determines that exceptional circumstances exist. For the purposes of expulsion, "firearm" is defined as:

1. Any stun weapon or taser;
2. Any pistol, revolver, or other weapon designed or intended to propel a missile of any kind;
3. Any dirk, bowie knife, switchblade, ballistic knife, or razor, slingshots, spring sticks, brass or metal knuckles, or blackjacks;
4. Any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nunchahka, nun chuck, nunchaku, shuriken, or fighting chain;
5. Any disk of whatever configuration, having at least two points or pointed blades, and which is designed to be thrown as a throwing star or oriental dart;
6. Any weapon of like kind as those enumerated in items 1 through 5;
7. Any weapon, including a starter gun, which will, or is designed or may readily be converted to, expel a projectile by the action of an explosive;
8. The frame or receiver of any weapon referenced in item 7;
9. Any firearm muffler or firearm silencer; or
10. Any "destructive device" defined as (i) any explosive, incendiary, poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known which will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device which is not designed or redesigned for use as a weapon and which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.

◆ V. RELATED TOPICS AND ISSUES

A student who is recommended for expulsion has a right to:

- ◆ Notice of the charge against him;
- ◆ An opportunity to tell his side of the story;
- ◆ An opportunity to a hearing before the school board or a committee thereof;
- ◆ An opportunity to be represented by counsel; and
- ◆ An opportunity to examine and cross-examine witnesses.

A student always has the right to appeal the school board's decision to a court of competent jurisdiction.

Any student who has been suspended from another school division for more than 30 days, expelled from any division in Virginia or in another state, or for whom admission to a private school is withdrawn for an offense in violation of school board policies related to destruction of school property or privately-owned property while located on school property, weapons, alcohol or drugs, or for the willful infliction of injury to another person may be excluded from attendance in another Virginia school division if it is determined that such student poses a danger to himself or others. Where expulsion or withdrawal of admission has occurred, the student may be excluded from attendance for up to one year (365 calendar days). In the case of a suspension for more than thirty days, the student may be excluded for no longer than the duration of such suspension. The procedure for such exclusion includes:

- ◆ Written notice to the student and his parent that the student may be subject to exclusion, including the reasons therefor, and notice of the opportunity for a hearing conducted by the superintendent or designee;
- ◆ A hearing of the case by the superintendent or designee is final; and
- ◆ The student may petition the school board to review the superintendent's decision (the school board does not have to grant such review).

Upon the expiration of the exclusion, the student may petition the school board for admission.



Related Reading

Update

Virginia Department of Education. (2001). ***Student Conduct Policy Guidelines, 2001 Revisions***. Available online at http://www.pen.k12.va.us/VDOE/Instruction/Sped/stu_conduct.pdf

Discipline: Students with Disabilities

Considerations for Disciplining Students with Disabilities

Source: Virginia Department of Education. ***Student Conduct Policy Guidelines, 2001 Revisions.***

The due process procedure for student suspensions and expulsions, as specified in §22.1-277 of the ***Code of Virginia***, as amended, applies to students with disabilities. There are, however, additional procedural protections that must be met when a local school division disciplines a student with disabilities. The specific procedural protections are applicable whenever a local school division is contemplating or proposing suspension or expulsion. The procedural requirements must be followed prior to the imposition of a long-term suspension or expulsion. Further, the procedural protections apply to a student with disabilities regardless of the level of special education and related services the student receives (consultation to residential). These procedural requirements will generally be included in the local school division's discipline policy.

The specific additional procedural protections that are required are dependent upon the statutory framework under which the student with disabilities is receiving special education and related services, i.e., the Individuals with Disabilities Education Act (the "IDEA") or Section 504 of the Rehabilitation Act of 1973 ("Section 504").

IDEA applies only to those students having specific impairments and who, because of the impairment, need special education and related services. Section 504, which mandates nondiscrimination on the basis of disability in all programs and activities receiving federal financial assistance, applies to any individual who qualifies as a handicapped person.

Handicapped person as defined in 34 C.F.R. §1.4.3 (j) is any person who

- ◆ has a physical or mental impairment which substantially limits one or more major life activities, or
- ◆ has a record of such an impairment, or
- ◆ is regarded as having an impairment.

Because the specific procedural protections afforded students with disabilities vary according to the statutory framework under which the student is receiving special education and related services, the protections required under each framework will be discussed separately.

◆ V. RELATED TOPICS AND ISSUES

The Virginia Department of Education revised state special education regulations to conform to the most current federal statutes and regulations. The revisions were approved by the Board in October 2000. Federal law takes precedence over state law, and students with disabilities must continue to receive a free and appropriate public education, even if they are long-term suspended or expelled.

Short-Term Removals

A student with a disability is entitled to the same due process rights that all students are entitled to under the local school division's disciplinary policies and procedures. A student with a disability may be removed from the student's current educational setting up to 10 cumulative school days in a school year for any violation of school rules to the extent removal would be applied to students without disabilities.

A student with a disability may be removed for a period of time that cumulatively exceeds 10 school days in a given school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the removals constitute a pattern, the requirements in the following section, Long-Term Removals, apply. Isolated, short-term suspension for unrelated instances of misconduct may not be considered a pattern; these removals do not constitute a change in placement.

Long-Term Removals

For purposes of removal of a student with a disability from the student's current educational placement, a change in placement occurs if:

- ◆ The removal is for more than 10 consecutive school days; or
- ◆ The student receives a series of removals that constitute a pattern because
 - The removals accumulate to more than 10 school days in a school year, and
 - The removals involve such factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

Authority of School Personnel

A student with a disability may be removed consistent with any violations of school rules to the extent removal would be applied to students without disabilities. School personnel may remove a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but not for more than 45 calendar days if:

- ◆ The student carries a weapon to or possesses a weapon to school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education, or
- ◆ The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.

The following definitions apply:

- ◆ Controlled substance means a drug or other substance identified under schedules I, II, IV, or V in ij202c of the Controlled Substance Act at 21 USC 812c.
- ◆ Illegal drugs means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substance Act or under any other provision of federal law.
- ◆ “Weapon” has the meaning given the term “dangerous weapons” in 18 USC 930g, paragraph 2, as well as any weapon defined as a dangerous weapon in the Code of Virginia (See ij22.1-277.01 (2000) and ij18.2-308.1 (1999) for definitions of “weapon.”)

Some Key Changes in the Regulations Regarding Discipline for Children with Disabilities

Update One of the major areas of concern in public comments on the NPRM was the issue of discipline for children with disabilities under the act. The previous list of major changes briefly describes the major changes from the NPRM that are reflected in these final regulations regarding discipline under §300.121(d) and §300.519-529. These changes reflect very serious consideration of the concerns of school administrators and teachers regarding preserving school safety and order without unduly burdensome requirements, while helping schools respond appropriately to a child's behavior, promoting the use of appropriate behavioral interventions, and increasing the likelihood of success in school and school completion for some of our most at-risk students.

The comments also revealed some confusion about several provisions of the act and the NPRM regarding discipline. Limitations in the statute and regulations about the amount of time a child can be removed from his or her current placement only come into play when schools are not able to work out an appropriate placement with the parents of a child who has violated a school code of conduct. In many, many cases involving discipline for children with disabilities, schools and parents are able to reach an agreement about how to respond to the child's behavior. In addition, neither the statute or the proposed or final regulations impose absolute limits on the number of days that a child can be removed from his or her current placement in a school year. As was the case in the past, school personnel have the ability to remove a child for short periods of time as long as the removal does not constitute a change of placement. To help make this point, the regulations include a new provision (§300.519) that reflects the Department's longstanding definition of what constitutes a "change of placement" in the disciplinary context. In this regulation, a disciplinary "change of placement" occurs when a child is removed for more than 10 consecutive school days or when the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of the removal, the total amount of time the child is removed, and the proximity of the removals to one another (§300.519). Changes also have been made to §300.520(a)(1) to make clear that multiple short-term removals (i.e., 10 consecutive days or less) for separate incidents of misconduct are permitted, to the extent removals would be applied to children without disabilities as long as those removals do not constitute a change of placement, as defined in §300.519.

◆ V. RELATED TOPICS AND ISSUES

Instead of requiring that services begin on the eleventh day in a school year that a child is removed from his or her current educational placement, as was proposed in the NPRM, the regulations take a more flexible approach. If the removal is pursuant to school personnel's authority to remove for not more than 10 consecutive days (§300.520(a)(1)) or for behavior that is not a manifestation of the child's disability, consistent with §300.524 services must be provided to the extent necessary to enable the child to continue to appropriately progress in the general curriculum and appropriately advance toward the goals in his or her IEP. (§300.121(d)).

If the removal is by school personnel under their authority to remove for not more than 10 school days at a time (§300.520(a)(1)), school personnel, in consultation with the child's special education teacher, make the determination regarding the extent to which services are necessary to meet this standard. (§300.121(d)(3)(1)).

On the other hand, if the removal constitutes a change in placement, the child's IEP team must be involved. If the removal is pursuant to the authority to discipline a child with a disability to the same extent as a non disabled child for behavior that has been determined to not be a manifestation of the child's disability (§300.524, the child's IEP team makes the determination regarding the extent to which services are necessary to meet this standard. §300.121(d)(3)(ii)). If the child is being placed in an interim alternative educational setting for up to 45 days because of certain weapon or drug offenses (§300.520(a)(2)) or because a hearing officer has determined that there is a substantial likelihood of injury to the child or others if the child remains in his or her current placement (§300.521), the services to be provided to the child are determined based on §300.522. In these cases, the interim alternative educational setting must be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP and include services and modifications to address the behavior. (§300.121(d)(2)(ii) and §300.522.

Under these regulations, IEP team meetings regarding functional behavioral assessments and behavioral intervention plans will only be required within 10 business days as follows:

- a. when the child is first removed for more than 10 school days in a school year, and
- b. whenever the child is subjected to a disciplinary change of placement.

(§300.520(b)(1)). In other subsequent removals in a school year of a child who already has a functional behavioral assessment and behavioral intervention plan, the IEP team members can review the behavioral intervention plan and its implementation in light of the child's behavior, without a meeting, and only meet if one or more of the team members believe that the plan or its implementation need modification. (§300.520(c)).

These final regulations also provide that manifestation determinations, and the IEP team meetings to make these determinations, are only required when a child is subjected to a disciplinary change of placement. (§300.523(a)). These changes should eliminate the need for unnecessary, repetitive IEP team meetings. The discussion of comments regarding the disciplinary sections of the regulations in Attachment 1 provides a fuller explanation of the regulatory provisions regarding discipline.

Answers to Some Commonly Asked Questions About Discipline Under IDEA

Prior to the amendments to the Education of the Handicapped Act (EHA) in 1975, (the EHA is today known as IDEA), the special educational needs of children with disabilities were not being met. More than half of the children with disabilities in the United States did not receive appropriate educational services, and a million children with disabilities were excluded entirely from the public school system. All too often, school officials used disciplinary measures to exclude children with disabilities from education simply because they were different or more difficult to educate than non disabled children.

It is against that backdrop that Pub. L. 94-142 was developed, with one of its primary goals being the elimination of any exclusion of children with disabilities from education. In the IDEA reauthorization of 1997, Congress recognized that in certain instances school districts needed increased flexibility to deal with safety issues while maintaining needed due process protections in the IDEA. The following questions and answers address: (1) the proactive requirements of the IDEA designed to ensure that children with disabilities will be able to adhere to school rules; (2) IDEA provisions regarding removal of students from their current placement when their behavior significantly violates school discipline codes; and (3) the IDEA requirement for the continuation of services for children with disabilities who are disciplined.

1. Why are there special rules about discipline for children with disabilities?

The protections in the IDEA regarding discipline are designed to prevent the type of often speculative and subjective decision making by school officials that led to widespread abuses of the rights of children with disabilities to an appropriate education in the past. For example, in *Mills v. Board of Education of the District of Columbia* (1972) the court recognized that many children were being excluded entirely from education merely because they had been identified as having a behavior disorder. It is important to keep in mind, however, that these protections do not prevent school officials from maintaining a learning environment that is safe and conducive to learning for all children. Well-run schools that have good leadership, well-trained teachers and high standards for all students have fewer discipline problems than schools that do not.

It is also extremely important to keep in mind that the provisions of the statute and regulation concerning the amount of time a child with a disability can be removed from his or her regular placement for disciplinary reasons are only called into play if the removal constitutes a change of placement and the parent objects to proposed action by school officials (or objects to a refusal by school officials to take an action) and requests a due process hearing. The discipline rules concerning the amount of time a child can be removed from his or her current placement essentially are exceptions to the generally applicable requirement that a child remains in his or her current placement during the pendency of due process, and subsequent judicial, proceedings. (See, §615(j) of the act and §300.514.) If school officials believe that a child's placement is inappropriate they can work with the child's parent through the IEP and placement processes to develop an appropriate placement for the child that will meet the needs of the child and result in his or her improved learning and the learning of others and ensure a safe environment. In addition to the other measures discussed in the following questions, the discipline provisions of the IDEA allow responsible and appropriate changes in placement of children with disabilities when their parents do not object.

◆ V. RELATED TOPICS AND ISSUES

2. Does IDEA contain provisions that promote proactive up-front measures that will help prevent discipline problems?

Yes. Research has shown that if teachers and other school personnel have the knowledge and expertise to provide appropriate behavioral interventions, future behavior problems can be greatly diminished if not totally avoided. Appropriate staff development activities and improved pre-service training programs at the university level with emphasis in the area of early identification of reading and behavior problems and appropriate interventions can help to ensure that regular and special education teachers and other school personnel have the knowledge and skills they need. Changes in the IDEA emphasize the need for state and local educational agencies to work to ensure that superintendents, principals, teachers, and other school personnel are equipped with the knowledge and skills that will enable them to address behavior problems when they occur.

In addition, the IDEA includes provisions that focus on individual children. If a child has behavior problems that interfere with his or her learning or the learning of others, the IEP team must consider whether strategies, including positive behavioral interventions, strategies, and supports are needed to address the behavior. If the IEP team determines that such services are needed, they must be added to the IEP and must be provided. The Department has supported a number of activities such as training institutes, conferences, clearinghouses and other technical assistance and research activities on this topic to help school personnel appropriately address behavioral concerns for children with disabilities.

3. Can a child with a disability who is experiencing significant disciplinary problems be removed to another placement?

Yes. Even when school personnel are appropriately trained and are proactively addressing children's behavior issues through positive behavioral intervention supports, interventions, and strategies, there may be instances when a child must be removed from his or her current placement. When there is agreement between school personnel and the child's parents regarding a change in placement (as there frequently is), there will be no need to bring into play the discipline provisions of the law. Even if agreement is not possible, in general, school officials can remove any child with a disability from his or her regular school placement for up to 10 school days at a time, even over the parents' objections, whenever discipline is appropriate and is administered consistent with the treatment of non-disabled children. [§300.520(a)(1)] However, school officials cannot use this authority to repeatedly remove a child from his or her current placement if that series of removals means the child is removed for more than 10 school days in a school year and factors such as the length of each removal, the total amount of time that the child is removed, and the proximity of the removals to one another lead to the conclusion that there has been a change in placement.[§300.519-300.520(a)(1)] There is no specific limit on the number of days in a school year that a child with a disability can be removed from his or her current placement. After a child is removed from his or her current placement for more than 10 cumulative school days in a school year, services must be provided to the extent required under §300.121(d), which concerns the provision of FAPE for children suspended or expelled from school.

If the child's parents do not agree to a change of placement, school authorities can unilaterally remove a child with a disability from the child's regular placement for up to 45 days at a time if the child has brought a weapon to school or to a school function, or

knowingly possessed or used illegal drugs or sold or solicited the sale of controlled substances while at school or a school function. [§300.520(a)(2)] In addition, if school officials believe that a child with a disability is substantially likely to injure self or others in the child's regular placement, they can ask an impartial hearing officer to order that the child be removed to an interim alternative educational setting for a period of up to 45 days (§300.521). If at the end of an interim alternative educational placement of up to 45 days, school officials believe that it would be dangerous to return the child to the regular placement because the child would be substantially likely to injure self or others in that placement, they can ask an impartial hearing officer to order that the child remain in an interim alternative educational setting for an additional 45 days. [§300.526(c)] If necessary, school officials can also request subsequent extensions of these interim alternative educational settings for up to 45 days at a time if school officials continue to believe that the child would be substantially likely to injure self or others if returned to his or her regular placement. [§300.526(c)(4)]

Additionally, at any time, school officials may seek to obtain a court order to remove a child with a disability from school or to change a child's current educational placement if they believe that maintaining the child in the current educational placement is substantially likely to result in injury to the child or others.

Finally, school officials can report crimes committed by children with disabilities to appropriate law enforcement authorities to the same extent as they do for crimes committed by non disabled students. (§300.529)

4. Do the IDEA regulations mean that a child with a disability cannot be removed from his or her current placement for more than 10 school days in a school year?

No. School authorities may unilaterally suspend a child with a disability from the child's regular placement for not more than 10 school days at a time for any violation of school rules if non-disabled children would be subjected to removal for the same offense. They also may implement additional suspensions of up to 10 school days at a time in that same school year for separate incidents of misconduct if educational services are provided for the remainder of the removals, to the extent required under §300.121(d). (See the next question regarding the provision of educational services during periods of removal.) However, school authorities may not remove a child in a series of short-term suspensions (up to 10 school days at a time), if these suspensions constitute a pattern that is a change of placement because the removals total more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. But not all series of removals that total more than 10 school days in a school year would constitute a pattern under §300.519(b).

Of course, in the case of less serious infractions, schools can address the misconduct through appropriate instructional and/or related services including conflict management, behavior management strategies, and measures such as study carrels, time-outs, and restrictions in privileges, so long as they are not inconsistent with the child's IEP. If a child's IEP or behavior intervention plan addresses a particular behavior, it generally would be inappropriate to utilize some other response, such as suspension, to that behavior.

◆ V. RELATED TOPICS AND ISSUES

5. What must a school district do when removing a child with a disability from his or her current placement for the eleventh cumulative day in a school year?

Beginning on the eleventh cumulative day in a school year that a child with a disability is removed from his or her current placement, the school district must provide those services that school personnel (for example, the school administrator or other appropriate school personnel) in consultation with the child's special education teacher determine to be necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. School personnel would determine where those services would be provided. This means that for the remainder of the removal that includes the eleventh day, and for any subsequent removals, services must be provided to the extent determined necessary, while the removal continues. [§300.121(d)(2) and (3)]

Not later than 10 business days after removing a child with a disability for more than 10 school days in a school year, the school district must convene an IEP team meeting to develop a behavioral assessment plan if the district has not already conducted a functional behavioral assessment and implemented a behavioral intervention plan for the child. If a child with a disability who is being removed for the eleventh cumulative school day in a school year already has a behavioral intervention plan, the school district must convene the IEP team (either before or not later than 10 business days after first removing the child for more than 10 school days in a school year) to review the plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. [§300.520(b)]

A manifestation determination would not be required unless the removal that includes the eleventh cumulative school day of removal in a school year is a change of placement. [§300.523(a)]

6. Does the IDEA or its regulations mean that a child with a disability can never be suspended for more than 10 school days at a time or expelled for behavior that is not a manifestation of his or her disability?

No. If the IEP team concludes that the child's behavior was not a manifestation of the child's disability, the child can be disciplined in the same manner as non disabled children, except that appropriate educational services must be provided. [§300.524(a)] This means that if non disabled children are long-term suspended or expelled for a particular violation of school rules, the child with disabilities may also be long-term suspended or expelled. Educational services must be provided to the extent the child's IEP team determines necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward the goals set out in the child's IEP. [§300.121(d)(2)]

7. Does the statutory language "carries a weapon to school or to a school function" cover instances in which the child acquires a weapon at school?

Yes. Although the statutory language "carries a weapon to school or to a school function" could be viewed as ambiguous on this point, in light of the clear intent of Congress in the Act to expand the authority of school personnel to immediately address school weapons offenses, the Department's opinion is that this language also covers instances in which the child is found to have a weapon that he or she obtained while at school.

Section 504 of the Rehabilitation Act of 1973

The procedural protections pertaining to the disciplining of a student with disabilities who is receiving special education and related services as a qualified “handicapped person” are somewhat different than the protections required under the IDEA. In actuality, they are not as expansive. A local school division would not be precluded from according the student with disabilities who is receiving special education and related services under Section 504 all of the procedural protections required under the IDEA.

Additional information and clarification are pending from VA Department of Education.



Related Reading

Before You Suspend Students with Disabilities. (1997). A packet of materials which includes a videotape, checklist, and manuscript. Available from the Virginia Department of Education.

“Continued Service Provision for Properly Expelled or Long-Term Suspended Students with Disabilities.” SUPTS. MEMO No. 97, June 4, 1997. Available at www.pen.k12.va.us

Update

Student Conduct Policy Guidelines, 2001 Revision. Virginia Department of Education. Available online at http://www.pen.k12.va.us/VDOE/Instruction/Sped/stu_conduct.pdf

Related Local School Board Policy

Disruptive Behavior

Disruptive behavior §22.1-276.2

Update

- ◆ *Disruptive behavior* means conduct that interrupts or obstructs the learning environment.

All school boards shall establish, within the regulations governing student conduct required by [§22.1-279.6](#):

- 1. Criteria for teachers to remove disruptive students from their classes;*
 - 2. Requirements for incident reports of disruptive behavior to school administrators and any other documentation to support such removals from class;*
 - 3. Procedures for the written notification of a student and his parents of any incident report and its contents and for the opportunity to meet with the teacher and school administrators to discuss the student's behavior and the possible consequences if such behavior does not cease;*
 - 4. Guidelines for the alternative assignment and instruction of such students and for the duration of such removals; and*
 - 5. Procedures for the return of students to class, for teacher participation in any decision by the principal to return a student to the class from which he has been removed, and for the resolution of any disagreements between such principal and teacher regarding such return.*
- C. The principal shall, unless a student who has been removed from class is suspended or expelled from school attendance, ensure that such student continues to receive an education.*
- D. Any teacher whose evaluation indicates deficiencies in the management of student conduct may be required by the school board to attend professional development activities designed to improve classroom management and disciplinary skills.*
- E. Application of this section to students with disabilities shall be in accordance with state and federal law and regulations.*
- F. This section shall not be construed to limit or restrict other school board policies and regulations for maintaining order in the classroom.*

Emancipation of Minors

Petition for emancipation §16.1-331

Update *Any minor who has reached his sixteenth birthday and is residing in this Commonwealth, or any parent or guardian of such minor, may petition the juvenile and domestic relations district court for the county or city in which either the minor or his parents or guardian resides for a determination that the minor named in the petition be emancipated. The petition shall contain, in addition to the information required by § [16.1-262](#), the gender of the minor and, if the petitioner is not the minor, the name of the petitioner and the relationship of the petitioner to the minor.*

Orders of court; investigation, report and appointment of counsel §16.1-332

If deemed appropriate, the court may (i) require the local department of welfare or social services or any other agency or person to investigate the allegations in the petition and file a report of that investigation with the court, (ii) appoint counsel for the minor's parents or guardian, or (iii) make any other orders regarding the matter which the court deems appropriate. In any case pursuant to this article the court shall appoint counsel for the minor to serve as guardian *ad litem*.

Findings necessary to order that minor is emancipated §16.1-333

The court may enter an order declaring the minor emancipated if, after a hearing, it is found that:

- (i) the minor has entered into a valid marriage, whether or not the marriage has been terminated by dissolution; or
- (ii) the minor is on active duty with any of the armed forces of the United States of America; or
- (iii) the minor willingly lives separate and apart from his parents or guardian, with the consent or acquiescence of the parents or guardian, and that the minor is or is capable of supporting himself and competently managing his financial affairs.

Effects of emancipation §16.1-334

An order that a minor is emancipated shall have the following effects:

- 1. The minor may consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability;
- 2. The minor may enter into a binding contract or execute a will;
- 3. The minor may sue or be sued in his own name;
- 4. The minor shall be entitled to his own earnings and shall be free of control by his parents or guardian;
- 5. The minor may establish his own residence;
- 6. The minor may buy and sell real property;

◆ V. RELATED TOPICS AND ISSUES

7. The minor may not thereafter be the subject of a petition under law as abused, neglected, abandoned, in need of services, in need of supervision, or in violation of a juvenile curfew ordinance enacted by a local governing body;
8. The minor may enroll in any school or college, with parental consent;
9. The minor may secure an operator's license without parental consent;
10. The parents of the minor shall no longer be the guardians of the minor;
11. The parents of a minor shall be relieved of any obligations respecting his school attendance;
12. The parents shall be relieved of all obligation to support the minor;
13. The minor shall be emancipated for the purposes of parental liability for his acts;
14. The minor shall execute releases in his own name; and
15. The minor may not have a guardian *ad litem* appointed pursuant to any statute solely because he is under age eighteen; and
16. The minor may marry without parental, judicial, or other consent.

Related Local School Board Policy

Gangs

Signs That There May Be Gang Activity in a School:

An increase in graffiti.

Groups of students using unfamiliar nicknames and/or vocabulary.

An increase in weapons incidents or incidents of intimidation.

Groups of students who have similar tattoos or insignia drawn on their books or other possessions.

Groups of students who greet each other in uniform but unusual ways.

Groups of students wearing similar types of clothing or colors.

Elements of Effective Gang Suppression Initiatives in Schools

(Source: Gang Suppression and Intervention: Community Models. U. S. Office of Juvenile Justice and Delinquency Prevention)

- Develop a school gang code with guidelines setting down for teachers and staff an appropriate response to different kinds of gang behavior, including a mechanism for dealing with serious gang delinquency.
- Apply the rules and regulations within a context of positive relationships and open staff communication with parents, community agencies and students.
- Make a clear distinction between gang and nongang-related activity to avoid exaggerating the scope of the problem.
- Assess openly the extent and seriousness of gang problems and reach a consensus among the school, staff, parents, community and justice system about the nature and scope of those problems.
- Form a school-community council to focus on the problem. Include parents, agencies, grassroots groups and juvenile justice authorities.
- Create a pattern of learning opportunities, coordinated security and services aimed at gang members and youth prone to gangs.
- Target hard-core gang members and youth less involved in gangs for special remedial education, support services and supervision.
- Offer basic academic and work-related, problem-solving tools, and introduce gang-prone youth early to the world of work, education and community responsibility. Link job apprenticeships and remedial education to career development.
- Encourage teachers and other staff to develop positive, personalized relationships with gang members. It can serve to reduce violent and disruptive acts.
- Involve parents of gang and nongang youth with meetings and street patrols, or by monitoring student activities, assisting teachers with activities, and helping with parent gang education programs.



Related Reading

The Study of Youth Gangs in Virginia (House Document No. 30, 1997). Virginia State Commission on Youth.

Update

“Youth Gangs in Schools” by James C. Howell and James P. Lynch. In **Juvenile Justice Bulletin**, August 2000. Available at

http://www.ncjrs.org/html/ojjdp/jjbul2000_8_2/contents.html

Law-Related Education

Law-related education is instruction about rules, laws and the legal system which actively involves students in order to prepare students for responsible citizenship. It is instruction that teaches about legal rights, responsibilities and the role of the citizen and requires students to practice application of that teaching to potential real-life situations. Although most frequently used in the social studies classes, LRE has potential applications in other classes and may be used at any grade level.

Law-related education uses resources outside the school; partnerships with police officers, attorneys, and other legal professionals are common. Today law-related education is recognized as not only a type of citizenship education which promotes democracy but also as an effective crime, violence, and delinquency prevention strategy. Examples of law-related education include the following:

CLASS ACTION: Teens and the Law

A Virginia juvenile crime prevention initiative in which trained law-enforcement officers teach secondary students using a curriculum which focuses on rights and responsibilities under Virginia law. This program has demonstrated effectiveness in increasing student understanding of Virginia law and in strengthening school-law enforcement collaboration.

Youth for Justice

A national law-related education supported by the Office of Juvenile Justice and Delinquency Prevention, U. S. Department of Justice, Youth for Justice involves youth in LRE programs that address national problems such as violence by and against youth. The program model provides curriculum materials, model programs, staff development and technical assistance.

Teens, Crime, and the Community (TCC)

This curriculum for middle through senior high schools was launched by the National Crime Prevention Council and the National Institute for Citizen Education in the Law in 1986. TCC offers students classroom instruction on a variety of crime prevention topics and encourages them to develop projects that benefit their school or community, such as educational campaigns, service to a victim assistance group, and school-based crime watch groups. TCC evaluations document its effectiveness in both urban and rural settings and in juvenile justice settings.



Related Reading

Law-Related Education and Violence Prevention by Robin Haskell McBee. In ***School Safety Update*** (Spring 1995).

Law-Related Education Resources

National Law-Related Education Resource Center (NLRC)

American Bar Association, Division for Public Education

541 N. Fairbanks Court

Chicago, IL 60611-3314

Telephone (312) 988-5735 Fax (312) 988-5494

NLRC advertises itself as the “preeminent source of information and services in public education about the law, collecting and disseminating information, research, and teaching materials worldwide.” Available are facts on current model programs, curricula, print, and multimedia materials for all groups and age levels.

Street Law, Inc.

918 16th Street, NW, Suite 602

Washington, DC 20006-2902

Telephone (202) 293-0088, FAX (202) 293-0089

www.streetlaw.org

Street Law, Inc. is a nonprofit organization dedicated to empowering people through law-related education (LRE). Law-related education is a unique blend of substance and instructional strategies. People learn substantive information about law, democracy, and human rights through strategies that promote problem solving, critical thinking, cooperative learning, improved communication skills, and the ability to participate effectively in society. Offers school-based program training and program development, conflict management/mediation training, the Teens, Crime, and the Community program, a Mock Trial program, and a Street Law Course for first-offender youth diverted from juvenile court.

School Safety

Crime, Violence, and Substance Abuse Reporting

Update

Reports of certain acts to school authorities §22.1-279.3:1*

- A. Reports shall be made to the principal or his designee on all incidents involving (i) the assault, assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a school bus, on school property, or at a school-sponsored activity; (ii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, **including the theft or attempted theft of student prescription medications**; (iii) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity; (iv) the illegal carrying of a firearm onto school property; **(v) any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in §18.2-85, or explosive or incendiary devices, as defined in §18.2-433.1, or chemical bombs, as described in §18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; or (vi) any threats or false threats to bomb, as described in §18.2-83, made against school personnel or involving school property or school buses.**
- B. **Notwithstanding the provisions of Article 12 (§16.1-299 et seq.) of Chapter 11 of Title 16.1, local law-enforcement authorities may report, and the principal or his designee may receive such reports, on offenses, wherever committed, by students enrolled at the school if the offense would be a felony if committed by an adult or would be a violation of the Drug Control Act (§54.1-3400 et seq.) and occurred on a school bus, on school property, or at a school-sponsored activity, or would be an adult misdemeanor involving any incidents described in clauses (i) through (v) of subsection A.**
- C. **The principal or his designee shall submit a report of all incidents required or authorized to be reported pursuant to this section to the superintendent of the school division. The division superintendent shall annually report all such incidents to the Department of Education for the purpose of recording the frequency of such incidents on forms that shall be provided by the Department and shall make such information available to the public. A division superintendent who knowingly fails to comply or secure compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized in §22.1-65. A principal who knowingly fails to comply or secure compliance with the reporting requirements of this section shall be subject to sanctions prescribed by the local school board, which may include, but need not be limited to, demotion or dismissal. The principal or his designee shall also notify the parent of any student involved in an incident required by subsection A or authorized by subsection B to be reported, regardless of whether disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall relate to only the relevant student's involvement and shall not include information concerning other students.**

* §22.1-280.1 was repealed. This section takes its place.

Whenever any student commits any reportable incident as set forth in this section, such student shall be required to participate in such prevention and intervention activities as deemed appropriate by the superintendent or his designee. Prevention and intervention activities shall be identified in the local school division's drug and violence prevention plans developed pursuant to the federal Improving America's Schools Act of 1994 (Title IV - Safe and Drug-Free Schools and Communities Act).

D. The principal shall immediately report to the local law-enforcement agency any act enumerated in subsection A that may constitute a criminal offense.

E. A statement providing a procedure and the purpose for the requirements of this section shall be included in the policy manual of all school divisions.

The Board of Education shall promulgate regulations to implement this section, including, but not limited to, establishing reporting dates and report formats.

F. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person having control or charge of a child.

G. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.



Related Reading

- "Effective Data Collection for Safe Public Schools: Exemplary Practices." In ***Creating Safe and Drug-Free Schools: An Action Guide***. (September 1996).
- U. S. Department of Education and U. S. Department of Justice. ***Recommendations of the Crime, Violence, and Discipline Reporting Task Force***. (November 1996). National Center for Education Statistics, U. S. Department of Education.
- "Reports of Certain Acts to School Authorities." Virginia Department of Education, SUPTS. MEMO No. 95, May 7, 1999.

Related Local School Board Policy

Crime Line

School crime line defined; development of school crime lines authorized; local school boards' authority; Board of Education to promulgate regulations. §22.1-280.2

- ◆ The school crime line is a confidential, anonymous system providing inducements for students to report any unlawful acts occurring in school buildings or on school grounds or during school-sponsored activities, to local law-enforcement officials.
- ◆ It can be established as a cooperative alliance between local school boards, the news media, the community, and law enforcement or through a separate, nonprofit corporation governed by a board of directors or as
- ◆ Part of a local crime stoppers program.
- ◆ Students may be rewarded for reporting unlawful acts if the report results in an arrest or recovery of stolen property.



Related Local School Board Policy

Crisis and Emergency Management Planning

§22.1-278.1. School safety audits and school crisis and emergency management plans required.

Update

A. For the purposes of this section, unless the context requires otherwise:

"School crisis and emergency management plan" means the essential procedures, operations, and assignments required to prevent, manage, and respond to a critical event or emergency, including natural disasters involving fire, flood, **tornadoes**, or severe weather; loss or disruption of power, water, communications or shelter; bus or other accidents; medical emergencies; student or staff member deaths; explosions; bomb threats; gun, knife or other weapons threats; spills or exposures to hazardous substances; the presence of unauthorized persons or trespassers; the loss, disappearance or kidnapping of a student; hostage situations; violence on school property or at school activities; and other incidents posing a serious threat of harm to students, personnel, or facilities.

Update

Effective July 1, 2002

School crises and emergency management plans must include incidents involving acts of terrorism to those crises and events that must be addressed in the school crisis and emergency plan to be developed by each public school in the Commonwealth.

D. Each school board shall ensure that every school that it supervises shall develop a written school crisis and emergency management plan, consistent with the definition provided in this section. The Department of Education **and the Virginia Center for School Safety** shall provide technical assistance to the school divisions of the Commonwealth in the development of the school crisis and emergency management plans.

Upon consultation with local school boards and division superintendents, *the Virginia Center for School Safety, and the Coordinator of Emergency Management*, the Board of Education shall develop, and may revise as it deems necessary, a model school crisis and emergency management plan for the purpose of assisting the public schools in Virginia in developing viable, effective crisis and emergency management plans. ***Such model shall set forth***

Update

recommended effective procedures and means by which parents can contact the relevant school or school division regarding the location and safety of their school children and by which school officials may contact parents, with parental approval, during a critical event or emergency.



Related Reading

Model School Crisis Plan. (1999). Office of Compensatory Programs, Virginia Department of Education. Available online at the Virginia Department of Education website:

Update

<http://www.pen.k12.va.us/VDOE/Instruction/model.html>

Resource Guide for Crisis Management in Schools. (2002). Virginia Department of Education.

The Gun-Free Schools Act (GFSA) P.L. 103-382

*Source: U. S. Department of Education and U. S. Department of Justice. **Creating Safe and Drug-Free Schools: An Action Guide.** September 1996.*

In August 1994, the Youth Handgun Safety Act (Title XI, Subtitle B) (P.L. 103-322) was passed as part of the Omnibus Violent Crime Control and Law Enforcement Act. It prohibits the possession, sale, or transfer of a handgun or ammunition to a juvenile. The law includes a number of exceptions, such as farming, hunting, and other specified uses. The Gun-Free Schools Act (P.L. 103-382) (GFSA), enacted in October 1994, requires that local educational agencies implement a policy "requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency." Under the Gun-Free Schools Act, each State receiving assistance under the Elementary and Secondary Education Act (ESEA) must have a law requiring expulsion from school, for a period of not less than 1 year, of any student who brings a firearm to school. The local chief administering officer may modify the expulsion requirement on a case-by-case basis.

Even though reducing youth gun violence is a Federal priority, the primary responsibility is on the State and local level. The Federal role must be to encourage and assist communities by providing support based on sound information gathered nationally on effective approaches to intervention and prevention.

Frequently Asked Questions

What entities are affected by the provisions of the Gun-Free Schools Act (GFSA)?

Each State, as well as its State educational agency and local educational agencies, has responsibilities under the GFSA.

Are private schools subject to the requirements of the Gun-Free Schools Act?

Private schools are not subject to the provisions of the GFSA, but private school students who participate in Local Educational Agency (LEA) programs or activities are subject to the 1-year expulsion requirement to the extent that such students are under the supervision and control of the LEA as part of their participation in the LEA's programs. For example, a private school student who is enrolled in a Federal program, such as Title I, is subject to a 1-year expulsion, but only from Federal program participation, not a 1-year expulsion from the private school. Of course, nothing prohibits a private school from imposing a similar expulsion from the private school on a student who brings a weapon to school.

Does the Gun-Free Schools Act's 1-year expulsion requirement preclude any due process proceedings?

No. Students facing expulsion from school are entitled under the U.S. Constitution and most State constitutions to the due process protection of notice and an opportunity to be heard. If, after due process has been accorded, a student is found to have brought a weapon to school, the GFSA requires an expulsion of not less than 1 year (subject to the case-by-case exception discussed below).

NOTE: 1 year means 365 days.

Gun-Free Schools Act (cont'd)

What does the Gun-Free Schools Act require of States?

The GFSA requires that each State receiving Federal funds under the ESEA must, by October 20, 1995, (1) have in effect a State law requiring LEAs to expel from school for not less than 1 year a student who is determined to have brought a weapon to school; (2) have in effect a State law allowing the LEAs chief administering officer to modify the expulsion requirement on a case-by-case basis; and (3) report to the Secretary on an annual basis concerning information submitted by LEAs to State Educational Agencies (SEAs). SEAs must also ensure that no ESEA funds are made available to an LEA that does not have a referral policy consistent with Section 14602.

1-year Expulsion Requirement

Each State's law must require LEAs to comply with a 1-year expulsion requirement; that is, subject to the exception discussed below, any student who brings a weapon to school must be expelled for not less than 1 year.

Case-by-Case Exception

Each State's law must allow the chief administering officer of an LEA to modify the 1-year expulsion requirement on a case-by-case basis.

Annual Reporting

Each State must report annually on LEA compliance with the 1-year expulsion requirement and on expulsions imposed under the State law, including the number of students expelled in each LEA and the types of weapons involved.

What does the Gun-Free Schools Act require of LEA's?

The GFSA requires that LEAs (1) comply with the State law requiring the 1-year expulsion; (2) provide an assurance of compliance to the SEA; (3) provide descriptive information to the SEA concerning the LEAs expulsions; and (4) adopt a referral policy for students who bring weapons to school.

1-year Expulsion Requirement

LEAs must comply with the State law requiring a 1-year expulsion; that is, subject to the case-by-case exception, any student who brings a weapon to school must be expelled for not less than 1 year.

LEA Assurance

An LEA must include in its application to the State educational agency for ESEA assistance an assurance that the LEA is in compliance with the State law requiring the 1-year expulsion.

Descriptive Report to SEA

An LEA must include in its application for ESEA assistance a description of the circumstances surrounding expulsions imposed under the 1-year expulsion requirement, including:

- (1) Name of the school concerned.
- (2) Number of students expelled from the school.
- (3) Type of weapons concerned.

Referral Policy

LEAs must also implement a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a weapon to school.

◆ V. RELATED TOPICS AND ISSUES

Gun-Free Schools Act (cont'd)

When must an LEA implement its referral policy?

LEAs must take immediate action to implement a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a weapon to school. The GFSA directs that no ESEA funds shall be made available to an LEA unless that LEA has the required referral policy.

When must an LEA submit the required assurance?

In its first application to the State educational agency for ESEA funds after the date that the State enacts and makes effective the required 1-year expulsion legislation, the LEA must include an assurance that the LEA is in compliance with the State law.

What is the role of the SEA in determining whether an LEA is in compliance with the Gun-Free Schools Act?

The GFSA requires States to report to the Secretary on an annual basis concerning LEA compliance. Therefore, before awarding any ESEA funds to an LEA, the SEA must ensure that the LEA has (1) implemented a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a weapon to school; and (2) included in its application for ESEA funds the assurance and other information required by the GFSA. SEAs must ensure that the LEA application contains:

- (1) An assurance that the LEA is in compliance with the State law requiring the 1-year expulsion; and
- (2) A description of the circumstances surrounding expulsions imposed under the 1-year expulsion requirement, including:
 - (A) the name of the school concerned.
 - (B) the number of students expelled from the school.
 - (C) the type of weapons concerned.

Who is an LEAs "chief administering officer"?

The term "chief administering officer" is not defined by the GFSA. Each LEA should determine, using its own legal framework, which chief operating officer or authority (e.g., Superintendent, Board, etc.) has the power to modify the expulsion requirement on a case-by-case basis.

Can any individual or entity other than the LEAs "chief administering officer" modify the 1-year expulsion requirement on a case-by-case basis?

No. However, the chief administering officer may allow another individual or entity to carry out preliminary information gathering functions, and prepare a recommendation for the chief administering officer.

Is it permissible for an LEA to use the case-by-case exception to avoid compliance with the 1-year expulsion requirement?

No, this exception may not be used to avoid overall compliance with the 1-year expulsion requirement.

Gun-Free Schools Act (cont'd)

How is the term "weapon" defined?

For the purposes of the GFSA, a "weapon" means a firearm as defined in Section 921 of Title 18 of the United States Code. According to Section 921, the following are included within the definition:

- o Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.
- o The frame or receiver of any weapon described above.
- o Any firearm muffler or firearm silencer.
- o Any destructive device, which includes:
 - (a) Any explosive, incendiary, or poison gas --
 - (1) Bomb,
 - (2) Grenade,
 - (3) Rocket having a propellant charge of more than four ounces,
 - (4) Missile having an explosive or incendiary charge of more than one-quarter ounce,
 - (5) Mine, or
 - (6) similar device.
 - (b) Any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter.
 - (c) Any combination or parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled.

According to Section 921, antique firearms are not included in the definition. In addition, the Bureau of Alcohol, Tobacco, and Firearms advises that Class-C common fireworks are not included in the definition of "weapon." For additional information about whether a particular weapon is a "firearm" under this definition, contact the Safe and Drug-Free Schools Program at 202-260-3954 for referral to the nearest Bureau of Alcohol, Tobacco and Firearms field office.

Does the Gun-Free Schools Act preclude classes such as hunting or military education, or activities such as before- or after-school hunting, or rifle clubs, which may involve the handling or use of weapons?

No. Although individual school districts may choose to prohibit firearms altogether, the Secretary does not believe that Congress intended the GFSA to preclude, in all circumstances, school-sponsored or authorized classes and activities that might involve the handling or use of firearms by students. The Secretary interprets the GFSA to allow local school districts to permit firearms at school when students are participating in school-sponsored or authorized activities that involve firearms. Similarly, based on the legislative history, the Secretary interprets the GFSA not to forbid school districts from allowing firearms at school when students intend to use firearms solely for before- or after-school hunting purposes, providing the school district's determination to permit firearms is made and disseminated in advance, as part of LEA policy, and is consistent with the intent and purposes of the GFSA to prevent violence and create an environment conducive to learning. For example, if a local school district approves an

◆ V. RELATED TOPICS AND ISSUES

Gun-Free Schools Act (cont'd)

extracurricular program such as a rifle club or allows students to bring firearms solely for before- or after-school hunting, the activities would not violate the GFSA if the school district:

- o Determines that the activity is consistent with the intent and purposes of the GFSA.
- o Provides notice as part of its Gun-Free Schools policy that the activities are approved and authorized.

If any firearms are to be allowed for these limited purposes, local school districts are cautioned to consider all applicable Federal, State, and local laws pertaining to the possession of firearms. In particular, school districts should be aware that Federal and some State laws prohibiting juveniles from possessing handguns may be applicable. The Secretary also encourages school districts that permit students to bring firearms to school for these limited purposes to adopt appropriate safeguards to ensure student safety, consistent with the purposes of the GFSA.

Are knives considered weapons under the Gun-Free Schools Act?

No, for the purposes of the GFSA, the definition of weapon does not include knives. State legislation, an SEA, or an LEA may, however, decide to broaden its own definition of weapon to include knives.

What is meant by the term "expulsion"?

The term "expulsion" is not defined by the GFSA; however, at a minimum, expulsion means removal from the student's regular program. Expulsion does not mean merely moving a student from a regular program in one school to a regular program in another school. Care should be taken by local officials to ensure that a student who is determined to have brought a firearm to school is effectively removed from that setting.

Is a State, SEA, or LEA required to provide alternative educational services to students who have been expelled for bringing a weapon to school?

The GFSA neither requires nor prohibits the provision of alternative educational services to students who have been expelled. Other Federal, State, or local laws may, however, require that students receive alternative educational services in certain circumstances.

What is an "alternative setting" for the provision of educational services to an expelled student?

An alternative setting is one that is clearly distinguishable from the student's regular school placement.

Is Federal funding available to provide alternative educational services?

Yes, formula grants awarded under the Safe and Drug-Free Schools and Communities Act may be used for alternative educational services. In addition, other Federal funds may be available for alternative educational services, consistent with each program's statutory and regulatory requirements.

Gun-Free Schools Act (cont'd)

Do the requirements of the Gun-Free Schools Act conflict with requirements that apply to students with disabilities?

No. Compliance with the GFSA may be achieved consistently with the requirements that apply to students with disabilities, so long as discipline of such students is determined on a case-by-case basis in accordance with the Individuals with Disabilities Education Act (IDEA) and Section 504. The U. S. Department of Education intends to issue separate, more detailed guidance on discipline of students with disabilities, which will include clarification of the implementation of the GFSA consistent with the reauthorization of IDEA and Section 504.

Is it permissible to expel a student for a "school year" rather than a year?

No. The statute explicitly states that expulsion shall be for a period of not less than 1 calendar year.

Does the expulsion requirement apply only to violations occurring in the school building?

No. The 1-year expulsion requirement applies to students who bring weapons to any setting that is under the control and supervision of the LEA.

Research and Evaluation

While there are few conclusive evaluations of youth gun violence prevention programs, because so many are new, a growing body of research identifies the circumstances surrounding the incidence of youth gun violence, providing guidance for prevention and intervention programs.

Effective programs should address young people's access to, carrying of, and use of guns. Research suggests that targeting the source of guns and drug dealing, increasing young people's faith in law enforcement and school administrators, teaching conflict resolution skills, and encouraging youth to develop positive attitudes about themselves and their peers may assist in creating a safer, violence-free school environment.



Related Reading

Gun-Free Schools Act: Guidelines. (1996) U. S. Department of Education.

Related Local School Board Policy

Parent Responsibility and Involvement

§22.1-279.3

- A. Each parent of a student enrolled in a public school has a duty to assist the school in enforcing the standards of student conduct and attendance in order that education may be conducted in an atmosphere free of disruption and threat to persons or property, and supportive of individual rights.
- B. A school board shall provide opportunities for parental and community involvement in every school in the school division.
- C. Within one calendar month of the opening of school, each school board shall, simultaneously with any other materials customarily distributed at that time, send to the parents of each enrolled student (i) a notice of the requirements of this section and (ii) a copy of the school board's standards of student conduct. These materials shall include a notice to the parents that by signing the statement of receipt, parents shall not be deemed to waive, but to expressly reserve, their rights protected by the constitutions or laws of the United States or the Commonwealth and that a parent shall have the right to express disagreement with a school's or school division's policies or decisions. Each parent of a student shall sign and return to the school in which the student is enrolled a statement acknowledging the receipt of the school board's standards of student conduct and the notice of the requirements of this section. Each school shall maintain records of such signed statements.
- D. The school principal may request the student's parent to meet with the principal or his designee to review the school board's standards of student conduct and the parent's responsibility to participate with the school in disciplining the student and maintaining order, and to discuss improvement of the child's behavior and educational progress.
- E. In accordance with §22.1-277 and the guidelines required by §22.1-279.6*, the school principal may notify the parents of any student who violates a school board policy when such violation could result in the student's suspension, whether or not the school administration has imposed such disciplinary action. The notice shall state (i) the date and particulars of the violation; (ii) the obligation of the parent to take actions to assist the school in improving the student's behavior; and (iii) that, if the student is suspended, the parent may be required to accompany the student to meet with school officials.
- F. No suspended student shall be admitted to the regular school program until such student and his parent have met with school officials to discuss improvement of the student's behavior, unless the school principal or his designee determines that readmission, without parent conference, is appropriate for the student.
- G. Upon the failure of a parent to comply with the provisions of this section, the school board may, by petition to the juvenile and domestic relations court, proceed against such parent for willful and unreasonable refusal to participate in efforts to improve the student's behavior, as follows:

* §22.1-278 was repealed. This section takes its place.

**Parental Responsibility and Involvement
(cont'd)**

1. If the court finds that the parent has willfully and unreasonably failed to meet, pursuant to a request of the principal as set forth in subsection D of this section, to review the school board's standards of student conduct and the parent's responsibility to assist the school in disciplining the student and maintaining order, and to discuss improvement of the child's behavior and educational progress, it may order the parent to so meet; or
 2. If the court finds that the parent has willfully and unreasonably failed to accompany a suspended student to meet with school officials pursuant to subsection F, or upon the student's receiving a second suspension or being expelled, it may order (i) the student or his parent to participate in such programs or such treatment as the court deems appropriate to improve the student's behavior or (ii) the student or his parent to be subject to such conditions and limitations as the court deems appropriate for the supervision, care, and rehabilitation of the student or his parent. In addition, the court may order the parent to pay a civil penalty not to exceed \$500.
- H. The civil penalties established pursuant to this section shall be enforceable in the juvenile and domestic relations court in which the student's school is located and shall be paid into a fund maintained by the appropriate local governing body to support programs or treatments designed to improve the behavior of students as described in subdivision 3 of subsection G. Upon the failure to pay the civil penalties imposed by this section, the attorney for the appropriate county, city, or town shall enforce the collection of such civil penalties.
- I. All references in this section to the juvenile and domestic relations court shall be also deemed to mean any successor in interest of such court.

Related Local School Board Policy

◆ V. RELATED TOPICS AND ISSUES

School Safety Audits

School safety audits are required by §22.1-278.1, **Code of Virginia** to identify and develop solutions for physical safety concerns in public schools and to identify and evaluate patterns of student safety concerns.

§22.1-278.1 also requires the Superintendent of Public Instruction to develop a list of items to be reviewed and evaluated in the school safety audits. The amendment also states that local school boards may establish safety committees to conduct safety audits. For additional information, contact the Virginia Department of Education.

In accordance with §22.1-278.1,

- "school safety audit" means a written assessment of the safety conditions in each public school.
- Additionally, each school shall maintain a copy of the school safety audit within the office of the school principal and shall make a copy of such report available for review upon written request.

Update

The twelve minimum components of the audit process that have been identified are:

1. Development and Enforcement of Policies
2. Procedures for Data Collection
3. Development of Intervention and Prevention Plans
4. Level of Staff Development
5. Opportunities for Student Involvement
6. Level of Parent and Community Involvement
7. Role of Law Enforcement
8. Development of Crisis Management Plans
9. Standards for Safety and Security Personnel
10. Safety and Security of Buildings and Grounds
11. Americans with Disabilities Act
12. Emergency Response Plans

Effective July 1, 2002

Requires schools to submit their respective school safety audits to the relevant school division superintendent. The division superintendent is required to collate and submit these school safety audits to the Virginia Center for School Safety. The Virginia Center for School Safety will join the Department of Education in providing technical assistance to school divisions in the development of school crisis and emergency management plans. The Virginia Center for School Safety was created, within the Department of Criminal Justice Services pursuant to legislation passed by the 2000 Session of the General Assembly, to provide training for Virginia public school personnel in school safety and the effective identification of students who may be at risk for violent behavior; serve as a resource and referral center providing information regarding current school safety concerns; and collect, analyze, and disseminate various Virginia school safety data, including school safety audit information, collected by the Department.



Related Reading

Updated

School Safety Audit: Protocol (June 2000). Virginia Department of Education.

Available online at

<http://www.pen.k12/va/us/go/VDOE/Instruction/schoolsafety/safetyaudit.pdf>

School Safety Work Book (1995). National School Safety Center.

Safe Schools: A Handbook for Violence Prevention. (1995). National School Safety Center.

Related Local School Board Policy

Search and Seizure

A "search" entails conduct by a government official (including public school employees) that involves an intrusion into a person's protected privacy interests by, for example, examining items or places that are not out in the open and exposed to public view. This is usually accomplished by "peeking," "poking," or "prying" into a place or item shielded from public view or a closed opaque container, such as a locker, desk, purse/handbag, knapsack, backpack, briefcase, folder, book, or article of clothing.

The term "seizure" is used to describe two distinct types of governmental action. A seizure occurs (1) when a government official interferes with an individual's freedom of movement (the seizure of a person), or (2) when a government official interferes with an individual's possessory interests in property (the seizure of an object).

The Fourth Amendment prohibition against unreasonable search and seizure applies in a public school setting. The United States Supreme Court interprets the Fourth Amendment as prohibiting governmental actions. Therefore, the constitutional prohibition applies to all personnel who may be imposing discipline because they are government employees.

The legal standard for search and seizure in public schools is different from the requirement in the criminal law context for adults. In the criminal law context, a law-enforcement officer must have a search warrant and probable cause to justify a search. Probable cause is having reasonable grounds for a belief that a person should be arrested or searched—having more factual evidence in favor of a suspicion than against it. *Black's Law Dictionary*, 6th ed., p. 1200 (1991).

However, the United States Supreme Court held that public schools and school administrators do not have to show probable cause to conduct school searches or seize student property. ***New Jersey v. T.L.O.*, 469 U.S. 325 (1985)**. "The legality of the search of a student should depend simply on the reasonableness under all the circumstances." *Id.* In other words, a court considers whether the search is fair or suitable, given all of the facts surrounding the search. The law in Virginia regarding search and seizure is not extensive. Generally, Virginia courts follow the precedent established in ***New Jersey v. T.L.O.***

Categories of Searches

Searches can be categorized as follows:

1. Blanket and random administrative searches.
2. Reasonable suspicion searches.
3. Consent searches.
4. Law enforcement searches based on probable cause.

To determine whether or not a student search is reasonable and therefore constitutional or legal, courts make a two-step inquiry:

- ◆ Are there reasonable grounds for suspecting that the search will uncover evidence that the student has violated or is violating either the law or the rules of the school? *Id.*

- ◆ Are the measures adopted (i.e., the type of search) reasonably related to the objectives of the search and not excessively intrusive given a student's age, sex and the nature of the offense. *Id.*

If the answer to each of these questions is yes, the search is reasonable and, therefore legal. Ordinarily, a belief that a student is violating either the school's rules or the law is sufficient to address the first part of the inquiry. **See also *Duarte v. Commonwealth*, 407 S.E.2d 41 (1991).** Yet a generalized suspicion that a crime or violation occurred is usually insufficient to justify a general search of students. **See *Burham v. West*, 681 F.Supp. 1160 (E.D. Va. 1987).**

Furthermore, the more intrusive a search is, the more reliable the evidence has to be that the student is violating a school rule or the law, and the more suspicion an administrator must have to justify a search. A highly intrusive strip search is rarely justified. Other examples of searches include blood and urine tests, searches of possessions, and checking a student's pockets.

However, the Office of the Attorney General has expressed the opinion that school personnel may conduct warrantless searches of student lockers and desks when the personnel have reasonable grounds to believe that the student is in possession of illegal drugs, contraband or weapons, provided the search is conducted primarily for enforcing order and discipline in the school and not for criminal prosecution. The Attorney General has also opined that "a general policy of compulsory drug testing of all students seeking re-enrollment solely because of a prior drug offense in school would be vulnerable to constitutional attack." 1989 Op. Atty Gen. Va. 204, December 22, 1989.

At least one court outside of Virginia held that public school officials may conduct generalized searches of lockers and other storage facilities if students are notified at the beginning of the year that these facilities are subject to inspection. **See *Zomora v. Pomeroy*, 639 F.2d 662 (10th Cir. 1981).** Courts in jurisdictions outside of Virginia have upheld the use of dogs in public schools for finding drugs. For lockers, the indication was that the use of dogs did not constitute a search within the meaning of the Fourth Amendment and students had no legitimate expectation of privacy in school lockers. **See, eg., *Horton v. Goose Creek Ind. School Dist.*, 690 F.2d 470 (5th Cir.), reh'g denied, 693 F.2d 470 (5th Cir. 1982).** However, cases involving dogs sniffing individuals differ. Because no courts in Virginia have ruled on the legality of drug-sniffing dogs in schools, school employees should consult their local school board attorney before conducting dog searches.

Guidelines for school board policies; school board regulations governing student conduct. §22.1-279.6

A. The Board of Education shall establish guidelines and develop model student conduct policies to aid local school boards in the implementation of such policies. The guidelines shall include (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others and dissemination of such policies to students, their parents, and school personnel.

◆ V. RELATED TOPICS AND ISSUES

Guidelines for student searches

§22.1-279.7

The Board of Education shall develop, in consultation with the Office of the Attorney General, guidelines for school boards for the conduct of student searches, including random locker searches and strip searches, consistent with relevant state and federal laws and constitutional principles.

Effective for the 2001-2002 school year, school boards shall adopt and revise, in accordance with the requirements of this section, regulations governing student searches that are consistent with the guidelines of the Board.

The Commonwealth of Virginia Department of Education's ***Student Conduct Policy Guidelines, 2001 Revisions*** indicates that student desks and lockers are the property of the schools which reserve the right to conduct searches. Yet the rationale behind advising students in advance of a search is that the student's individual right to privacy and freedom from unreasonable searches and seizures is protected. The right is also balanced against the school's responsibility to protect the health, safety and welfare of all persons within the school division.



Related Reading

Virginia School Search Resource Guide. (October 2000). Virginia Department of Education. Available online at: <http://www.pen.k12.va.us/VDOE/Instruction/ssg.pdf>

Sexual Offenses

Report of arrest of school employees for certain offenses §19.2-83.1

Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary teacher or other employee in any public school division in this Commonwealth for a felony or a ***Class 1 misdemeanor or an equivalent offense in another state shall file a report of such arrest with the division superintendent of the employing division as soon as reasonable practical. The contents of the report required pursuant to this section shall be utilized by the local school division solely to implement the provisions of §§22.1-296.2 B and 22.1-315.***

Update

Dissemination of criminal history record information §19.2-389

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

23. Pursuant to §22.1-296.3, the governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education ***or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;***

Update

24. ***Public and non-profit private*** colleges and universities for the purpose of screening individuals who are offered or accept public employment;

◆ V. RELATED TOPICS AND ISSUES

§22.1-315 Grounds and procedure for suspension

- ◆ A teacher or public school employee, whether full-time or part-time, permanent or temporary, may be suspended for good and just cause with or without pay when the safety or welfare of the school division or the students is threatened or when the teacher or school employee has been charged by summons, warrant, indictment or information with the commission of a felony, or a misdemeanor involving sexual assault, obscenity and related offenses, drugs, moral turpitude, or any physical or sexual abuse or neglect of a child, or an equivalent offense in another state.
- ◆ The accused person must be given an opportunity for a hearing before the school board. The school board may still dismiss the teacher or school employee or place the person on probation.
- ◆ But no teacher or school employee shall be suspended solely on the basis of his or her refusal to submit to a polygraph examination requested by the school board.

Sexual Harassment by School Employees, Other Students, or Third Parties: Highlights of Guidance from the U. S. Department of Education, Office of Civil Rights

Note: Full text was published in the *Federal Register* on March 13, 1997 and is available from U. S. Department of Education, Office of Civil Rights.

1. **Definition:** Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when it is sufficiently severe, persistent or pervasive to limit a student's ability to participate in or benefit from the educational program, or to create a hostile or abusive educational environment.
2. **School Liability:** A school will be held liable for employee, student, or third party conduct where:
 - ◆ A hostile environment exists.
 - ◆ The school knows or should have known of the conduct; and
 - ◆ The school fails to take immediate and appropriate steps to remedy it.
3. **Welcomeness:** Conduct is unwelcome when the student being harassed did not "solicit or incite it" and "regarded the conduct as undesirable or offensive."
4. **Severe, Persistent or Pervasive:** The following are to be considered in determining whether harassment was severe, persistent or pervasive:
 - ◆ The degree to which the conduct affected one or more students' education.
 - ◆ The type, frequency and duration of the conduct.
 - ◆ The number of individuals involved.
 - ◆ The age and sex of the alleged harasser and the subject(s) of the harassment.
 - ◆ The size of the school, location of the incidents and context in which they occurred.
 - ◆ Other incidents at the school.
 - ◆ Incidents of gender-based, non-sexual harassment.
5. **Notice:** A school is considered to have known about sexual harassment if
 - ◆ Student filed a grievance, or complained to a teacher.
 - ◆ Student, parent or other contacted a principal, school security, bus driver, teacher, etc.
 - ◆ Agent of the school, such as a teacher, witnessed the harassment.
 - ◆ Indirect notice from staff, community member, the media or flyers posted around the school.
 - ◆ Constructive notice exists when a school would have found out about the harassment through "reasonably diligent inquiry" or in cases where it is so pervasive that it is widespread, openly practiced or well-known to students and staff.

◆ V. RELATED TOPICS AND ISSUES

6. Grievance Procedures: Schools are required to adopt Title IX sex discrimination grievance procedures which must provide an effective avenue for responding and include:

- ◆ Notice of the procedure to parents, students and employees.
- ◆ Application of the procedure to complaints alleging harassment by students.
- ◆ Adequate and reliable investigation by an impartial investigator.
- ◆ Designated time frames for the major stages of the complaint process.
- ◆ Notice to the parties of the complaint's disposition.
- ◆ Steps to prevent recurrence and correct its effects.
- ◆ A designated staff member to handle efforts to comply with Title IX.

7. Reasonable Response: If an incident of alleged sexual harassment occurs:

- ◆ Investigate and determine appropriate steps to resolve the situation.
- ◆ Take reasonable and timely corrective action.
- ◆ Take appropriate steps to end the harassment.
- ◆ Focus corrective action on the harasser.
- ◆ Take steps to prevent future harassment. At minimum, make sure the victims and their families know how to report further problems and make follow-up inquiries to see if there has been any retaliation.
- ◆ If the student does not want his or her name disclosed, take all possible steps to investigate and respond consistent with that request.
- ◆ Focus support efforts on the victim.



Related Reading

Protecting Students from Harassment and Hate Crime: A Guide for Schools (January 1999) U.S. Department of Education, Office of Civil Rights.

Available for downloading at <http://www.ed.gov/pubs/Harassment/>

“U. S. Supreme Court Decision on School Liability for Student-on-Student Sexual Harassment.”
Virginia Department of Education, SUPTS. MEMO No. 119, June 11, 1999.

See also 22.1-3.3, ***Code of Virginia*** relating to the transfer to another school of students who have been victimized.

Related Local School Board Policy

Suicide Intervention

Responsibility to contact parent of student at imminent risk of suicide; notice to be given to social services if parental abuse or neglect; Board of Education, in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Health, to develop guidelines for parental contact. §22.1-272.1.

A. Any person licensed as administrative or instructional personnel by the Board of Education and employed by a local school board who, in the scope of his employment, has reason to believe, as a result of direct communication from a student, that such student is at imminent risk of suicide, shall, as soon as practicable, contact at least one of such student's parents to ask whether such parent is aware of the student's mental state and whether the parent wishes to obtain or has already obtained counseling for such student. Such contact shall be made in accordance with the provisions of the guidelines required by subsection C.

B. If the student has indicated that the reason for being at imminent risk of suicide relates to parental abuse or neglect, this contact shall not be made with the parent. Instead, the person shall, as soon as practicable, notify the local department of social services of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or the state Department of Social Services' toll-free child abuse and neglect hotline, as required by §63.1-248.3. When giving this notice to the local or state department, the person shall stress the need to take immediate action to protect the child from harm.

C. The Board of Education, in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Health, shall develop guidelines for making the contact required by subsection A. These guidelines shall include, but need not be limited to, (i) criteria to assess the suicide risks of students, (ii) characteristics to identify potentially suicidal students, (iii) appropriate responses to students expressing suicidal intentions, (iv) available and appropriate community services for students expressing suicidal intentions, (v) suicide prevention strategies which may be implemented by local schools for students expressing suicidal intentions, (vi) criteria for notification of and discussions with parents of students expressing suicidal intentions, (vii) criteria for as-soon-as-practicable contact with the parents, (viii) appropriate sensitivity to religious beliefs, and (ix) legal requirements and criteria for notification of public service agencies, including, but not limited to, the local or state social services and mental health agencies. These guidelines may include case studies and problem-solving exercises and may be designed as materials for in-service training programs for licensed administrative and instructional personnel.



Related Reading

Update

Suicide Prevention Guidelines. (1999). Board of Education, Commonwealth of Virginia. Available online at www.pen.k12.va.us/VDOE/Instruction/prevention.pdf

Uniforms

Uniforms in public schools; Board of Education guidelines §22.1-79.2

- A. The Board of Education shall develop model guidelines for local school boards to utilize when establishing requirements for pupils to wear uniforms. In developing these guidelines, the Board shall consider (i) ways to promote parental and community involvement, (ii) relevant state and federal constitutional concerns, such as freedom of religion and freedom of speech, and (iii) the ability of pupils to purchase such clothing.
- B. Upon approval by the Board of the model guidelines, local school boards may establish requirements, consistent with the Board's guidelines, for the students enrolled in any of their schools to wear uniforms while in attendance at such school during the regular school day. No state funds may be used for the purchase of school uniforms.



Related Reading

Guidelines on the Wearing of Uniforms in Public Schools. Adopted May 23, 1996 by the Virginia State Board of Education. See SUPTS. MEMO No. 112, June 14, 1996. Available at www.pen.k12.va.us

Manual on School Uniforms. U. S. Department of Education. March 1996. Available at www.ed.gov/offices/OESE/SDFS

Related Local School Board Policy

Victim's Rights

§19.2-11.01 The Crime Victim and Witness Rights Act (usually referred to as the "Victims' Bill of Rights") was made law by the Virginia General Assembly in 1995. The Act recognizes the following individuals as crime "victims":

Anyone suffering physical, emotional or financial harm as a direct result of a felony or certain misdemeanor crimes.

The definition of victim includes spouses, children, parents and guardians of certain victims.

Following a crime, law-enforcement personnel shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims.

The **purpose** of this law is to ensure that victims and witnesses of crime:

- ♦ Have opportunities to make the courts aware of the full impact of crime.
- ♦ Are treated with dignity, respect, and sensitivity and that their privacy is protected where the law allows.
- ♦ Are informed of their rights.
- ♦ Receive authorized services.
- ♦ Have the opportunity to be heard at critical stages of the criminal justice process.

Update

CRIME VICTIM AND WITNESS RIGHTS

Victims or witnesses of crime have certain rights under Virginia's Crime Victim and Witness Rights Act.

The victim of a crime may be entitled to:

Information about:

- ♦ Protection
- ♦ Financial assistance and social services, including the Criminal Injuries Compensation Fund (crime victims' compensation)
- ♦ Address and telephone number confidentiality
- ♦ Closed preliminary hearing or use of closed-circuit television, if you were the victim of a sexual offense
- ♦ Separate waiting area during court proceedings
- ♦ The right to remain in the courtroom during a criminal trial or proceeding

◆ V. RELATED TOPICS AND ISSUES

Assistance in:

- ◆ Obtaining protection
- ◆ Obtaining property held by law enforcement agencies
- ◆ Intercession services with your employer
- ◆ Obtaining advanced notice of court proceedings
- ◆ Receiving the services of an interpreter
- ◆ Preparing a Victim Impact Statement
- ◆ Seeking restitution

Notification of:

- ◆ Changes in court dates
- ◆ Changes in the status of the defendant, if he/she is being held in a jail or a correctional facility
- ◆ The opportunity to prepare a written victim impact statement prior to sentencing of a defendant

A witness to a crime may be entitled to:

Information about:

- ◆ Protection
- ◆ Address and telephone number confidentiality
- ◆ A separate waiting area during court proceedings

Assistance with:

- ◆ Obtaining protection
- ◆ Receiving intercession services with your employer
- ◆ Receiving the services of an interpreter

Transfer of certain students §22.1-3.3

§22.1-3.3 allows the transfer of students who were the victims of any crime against the person committed by any of the following persons:

- ◆ Another student who attends classes in the same school;
- ◆ Any employee of the local school board;
- ◆ Any volunteer, contract worker or other person who regularly works in the school.

Update

Or if the crime was committed upon school property or on any school bus owned or operated by the school division.

The transfer must be to another comparable school within the school division if available. Such transfer is to occur only when requested by parent, or student if emancipated, when the student would suffer physical or psychological harm.

For the purposes of this section, "victim" means any student who has been the victim of a crime against the person pursuant to Chapter 4 (§[18.2-30](#) et seq.) of Title 18.2, and who has suffered physical, psychological, or economic harm as a direct result of the **commission of such crime**.

VI. CONFIDENTIALITY AND STUDENT RECORDS

The Family Educational Rights and Privacy Act (FERPA)

Schools are often called upon to provide information regarding current or former students to a variety of individuals and organizations. For example, social services agencies, law-enforcement agencies, youth-serving organizations, and health agencies often seek information concerning students to whom they are providing services. While the sharing of information contained in record systems (education and law-enforcement records) maintained by the school is critical to the effective delivery of services, it cannot be done indiscriminately because Federal laws restrict the release of information contained in student records.

What is FERPA?

The Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal law that requires school administrators to tell parents and students when they reach 18 years of age, or attend a post-secondary educational institution, that they have the following rights:

- ♦ To be informed about their rights under FERPA and where they may see a copy of the school division's policies and procedures;
- ♦ To review and inspect student educational records;
- ♦ To challenge the content of any educational record believed to be inaccurate, misleading, or otherwise in violation of a student's rights;
- ♦ To prevent the disclosure of personally identifiable information in the absence of prior written consent;
- ♦ To file complaints with the Family Educational Rights and Privacy Act Office.

Parental rights to a student's record transfer to students when they reach 18 years of age or attend a post-secondary educational institution. FERPA identifies these students as "eligible students."

The Individuals with Disabilities Act (IDEA) requires school administrators to afford an eligible student similar rights of privacy that are afforded to parents, considering the student's age and severity of his or her disability.

To whom does FERPA apply?

FERPA applies to any public or private educational agency that receives funds from a program administered by the Secretary of Education.

◆ VI. CONFIDENTIALITY AND STUDENT RECORDS

What is the purpose of FERPA?

FERPA is designed to protect against intrusion into a person's privacy by the release of information that may result in harm or damage or humiliation from the disclosure of facts about his or her background and interests.

What are the requirements of FERPA?

Notice Requirement

FERPA requires local school divisions to annually notify parents and eligible students of their rights. This requirement extends to parents who speak a primary language other than English. Administrators must also notify parents and eligible students when a student's record is transferred to another school division, or when a school division proposes the destruction of information from the student's record. Notice must be "reasonably likely to inform parents and eligible students of their rights." Forms of notice include letter, publication in a student handbook, or other means which will assure notification to the student's home. Notice must include a statement that the student or parent has the right to:

- ◆ Inspect and review the student's educational record;
- ◆ Request the amendment of the student's educational record to ensure that it is not "misleading, inaccurate, or in violation of the student's privacy or other rights;"
- ◆ Consent to disclosures of personally identifiable information except to the extent that FERPA permits disclosure without consent; (Any agency that violates disclosure limitations risks being prohibited from obtaining access to information from educational records for a period of a least five years.)
- ◆ File a complaint with the United States Department of Education's Family Policy and Regulation Office concerning alleged failure of local educational agencies to comply with FERPA requirements;
- ◆ Obtain a copy of the local school division's policy regarding the management of student records. Notice must also inform parents and eligible students where copies of the school division's policies are located.

Consent Requirement

Parents and eligible students have the right to consent to the release of personally identifiable records to certain individuals, unless the records have been identified as directory information.

Record Review

Local school divisions must permit parents and eligible students to review education records relating to the student which are collected, maintained or used by the local school districts. The right of record review includes:

- ◆ The right to inspect records before a meeting or hearing.
- ◆ School divisions must comply with a request within a reasonable period of time, not to exceed 45 days from the day of receiving the request for record review. However,

VI. CONFIDENTIALITY AND STUDENT RECORDS ♦

the Virginia Freedom of Information Act requirement is five days. Students records are excluded from Freedom of Information Act requirements. See 2.1-342(A)3.

- ♦ The right to receive a response to reasonable requests for explanations and interpretations of the records.
- ♦ The right to request the school to provide copies of the records if failure to provide copies would prevent the parent from exercising the right of record review. The school may charge a fee for copies but not for search and retrieval of records, nor can the school withhold a record, including a report card, for nonpayment of fees.
- ♦ The right to allow a representative of the parent to inspect and review school records.

Review by Parents and Eligible Students

All parents, including non-custodial parents, have a right to review their child's educational records, unless a court order states the contrary or the parent signed a waiver of his or her right of access to the records. (Parents may revoke a waiver at any time.) All rights accorded to parents are transferred to the student when he or she becomes eligible.

Review by Students Under 18 Years of Age

Local school districts may disclose information to a student who is under 18 years of age if the parent provides written consent, unless the student is an emancipated minor, or enrolled at a post-secondary educational institution. A minor may also waive the right to review confidential letters and statements for admission.

Record Amendment

An eligible student or a parent may ask for an amendment of the student's record if he or she believes that it contains inaccurate or misleading information, or if the information violates the student's right of privacy. Local school divisions must decide within a reasonable time whether to amend the record. The school division must notify the parent or eligible student of the decision. Also the school division must notify parents and students that they have a right to a hearing where they may challenge the content of the record.

The local school division must also notify the parent or eligible student of the amendment in writing if the decision is to amend the record. If the decision is not to amend, the local school division must inform the parent or eligible student of the right to place a statement in the record commenting on the information or explaining why he or she disagrees with the information. This statement must be maintained as long as the record is retained and disclosed when it is disclosed.

The Hearing--Minimum Requirements under FERPA

- ♦ The school division must hold the hearing within a reasonable time after the request is received for amendment of the record.
- ♦ The school division must provide the parent or eligible student with notice of the date, time and place of the hearing within a reasonable period of time prior to the hearing.
- ♦ Any party may conduct the hearing.

◆ VI. CONFIDENTIALITY AND STUDENT RECORDS

- ◆ The school division must afford the parent or eligible student a full and fair opportunity to present evidence relevant to the issues. The parent may be assisted by his or her own attorney or another person. The decision to amend or not to amend must be provided in writing within a reasonable time after the hearing. Furthermore, the decision must be based upon the evidence presented at the hearing and summarize the reasons for the decision.

How is information categorized under FERPA?

Information is categorized as either “directory” or “non-directory” information. *Directory information* refers to facts that are not considered private or facts that may be made available to persons other than the parent or student. Consent is not required for the disclosure of directory information. Directory information may include the following:

- ◆ The student’s name, address, telephone number, date and place of birth;
- ◆ The student’s major field of study;
- ◆ Participation in officially recognized activities and sports;
- ◆ Weight and height of members of athletic teams;
- ◆ Dates of attendance;
- ◆ Degrees and awards received;
- ◆ The most recent previous educational agency or institution attended by the student;
- ◆ Other non-private information, including photographs, class schedules or attendance records.

Annually, school divisions must designate what information is to be considered directory information.

Non-directory information refers to personally identifiable information or material included in the student’s educational record other than directory. Non-directory information includes:

- ◆ The student’s complete transcripts or report cards;
- ◆ The student’s family background or socioeconomic information;
- ◆ Psychological evaluations;
- ◆ Any information in which the student is personally identifiable.

What does a record include?

A *record* is any information or data that is recorded in any medium, including handwriting, print, tapes, film, microfilm and microfiche. *Common knowledge* is not an official record. FERPA and laws governing state records do not prohibit comment on, or discussion of, facts about a minor that are learned independently of the minor’s official records. Therefore, consent from the parent or student is not required under *federal* law to pass along information that is learned from newspapers, court records or public records. However, *state* law prohibits school personnel from disclosing certain court records provided to them.

When may administrators release student records without the parent’s consent?

Examples of allowable release of student records under FERPA without parental consent include the following exceptions:

VI. CONFIDENTIALITY AND STUDENT RECORDS ♦

- ♦ To school officials with “legitimate educational interests.” This exception is narrowly interpreted to mean persons to whom information may be released must have an interest in the educational well-being of the student within the concept of parental responsibility for the child’s development.
- ♦ To “eligible students.”
- ♦ To “parents of dependent students.” The Internal Revenue Code defines this term.
- ♦ To comply with a court order or subpoena. (A reasonable effort must be made, however, to contact the student or parent in advance of compliance.)
- ♦ In an emergency, if the knowledge of such information is necessary to protect the health or safety of the student or other persons. Factors to consider in determining if information is necessary for protection of health or safety include:
 - ♦ Seriousness of the health or safety threat;
 - ♦ The need for the information in order to meet the emergency;
 - ♦ Whether the persons to whom information is disclosed are able to deal with the emergency;
 - ♦ The extent to which time is of the essence in dealing with an emergency.
 - ♦ An actual, present emergency is required to invoke this exception. Disclosure is not allowed where the student has a significant potential for crime or violence that has not yet presented itself.

Other FERPA exceptions include:

- ♦ Disclosure to certain educational authorities for audit purposes;
- ♦ In connection with student financial aid programs;
- ♦ For educational studies;
- ♦ For accrediting organizations;
- ♦ For state laws adopted before the enactment of FERPA.



Related Reading

FERPA: Schools and Interagency Communication for Delinquency Intervention and Prevention. U. S. Department of Education and U.S. Department of Justice. 1997.

Related Local School Division Policy

◆ VI. CONFIDENTIALITY AND STUDENT RECORDS

SUMMARY OF AMENDMENTS TO IDEA REGARDING STUDENT RECORDS

Referral to and Action by Law Enforcement & Judicial Authorities 34 CFR 300.529: A school reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. (The final regulations clarify that a child's special education and disciplinary records may only be transmitted to the extent that such transmission is permitted under FERPA.)

Opportunity to Examine Records

34 CFR 300.501: The parents of a child with a disability must be afforded an opportunity to inspect and review all education records relating to that child. This may include records traditionally not part of a student's scholastic record.



Related Reading

“Guidelines for the Management of the Student’s Scholastic Record in Virginia Public Schools.”
Virginia Department of Education, SUPTS. MEMO No. 77, April 16, 1999. Available at
www.pen.k12.va.us

Juvenile Court - School Communication

Notice to Superintendent of Petition §16.1-260G

G. After a petition is filed alleging that a juvenile committed an act which would be a crime if committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

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1. ***A firearm offense pursuant to Article 4 (§18.2-279 et seq.), 5 (§18.2-288 et seq.), 6 (§18.2-299 et seq.), or 7 (§18.2-308 et seq.) of Chapter 7 of Title 18.2;***
2. Homicide, pursuant to Article 1 (§18.2-30 of Chapter 4 of Title 18.2;
3. Felonious assault and bodily wounding, pursuant to Article 4 (§18.2-51 et seq.) of Chapter 4 of Title 18.2;
4. Criminal sexual assault, pursuant to Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2;
5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§18.2-247 et seq.) of Chapter 7 of Title 18.2;
6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§18.2-247 et seq.) of Chapter 7 of Title 18.2;
7. Arson and related crimes, pursuant to Article 1 (§18.2-77 et seq.) of Chapter 5 of Title 18.2;
8. Burglary and related offenses, pursuant to §§18.2-89 through 18.2-93 **or**
9. Robbery pursuant to §18.2-58.

Promptly after filing a petition the intake officer shall also mail notice, by first-class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in §16.1-305.2.

§16.1-305.1 Disclosure of disposition in certain delinquency cases

Upon disposition of a proceeding in a court of competent jurisdiction in which a juvenile is adjudicated delinquent or convicted of a crime based upon a violation of the law involving

1. A firearm offense pursuant to Articles 4 (§18.2-279 et seq.), 5 (§18.2-288 et seq.), 6 (§18.2-299 et seq.), or 7 (§18.2-308 et seq.) of Chapter 7 of Title 18.2;
2. Homicide, pursuant to Article 1 (§18.2-30 et seq.) of Chapter 4 of Title 18.2;
3. Felonious assault and bodily wounding, pursuant to Article 4 (§18.2-51 et seq.) of Chapter 4 of Title 18.2;
4. Criminal sexual assault, pursuant to Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2;
5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§18.2-247 et seq.) of Chapter 7 of Title 18.2;
6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§18.2-247 et seq.)

◆ VI. CONFIDENTIALITY AND STUDENT RECORDS

of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§18.2-77 et seq.) of Chapter 5 of Title 18.2; or

8. Burglary and related offenses, pursuant to §§18.2-89 through 18.2-93; or

9. Robbery pursuant to §18.2-58.

Disclosure of notice of the filing of a petition by division superintendent §16.1.305.2

- ◆ A division superintendent is prohibited from disclosing information contained in or derived from a notice of petition.
- ◆ The superintendent is required to notify the intake officer of the juvenile court in which the petition is filed, if the juvenile who is the subject of the petition is not enrolled as a student in a public school of the division to which notice was given.
- ◆ If the division superintendent believes that he or she needs to disclose to school personnel to ensure the safety of the juvenile, other students or school personnel, he or she may disclose that a petition has been filed and the nature of the offense at any time prior to receiving notice of disposition.
- ◆ However, the superintendent may disclose this fact only to the principal of the school in which the juvenile who is the subject of the petition is enrolled.
- ◆ The principal may further disseminate the information after the juvenile has been taken into custody, whether or not the juvenile has been released.
- ◆ However, the principal may disseminate information only to those students and school personnel having direct contact with the juvenile and personnel who need the information to ensure that safety or educational placement or other services are provided.

§16.1-309 (B) Penalty for Disclosure - Class 3 misdemeanor

Exception:

- ◆ ***The provisions of this section shall not apply to any law-enforcement officer or school employee who discloses to school personnel identifying information concerning a juvenile who is suspected of committing or has committed a delinquent act that has met applicable criteria of §16.1-260 and is committed or alleged to have been committed on school property or during a school-sponsored activity or on the way to or from such an activity, if the disclosure is made solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to §§16.1-305.1 and 22.1-288.2, if the disclosure is made solely to enable school personnel to take appropriate actions within the school setting with regard to the juvenile or another student.***

Update

Scholastic Records

Transfer and management of scholastic records; disclosure of information in court notices; penalty §22.1-289 (A)

(Also see: *FERPA: Schools and Interagency Communication for Delinquency Intervention and Prevention*. U.S. Department of Education and U.S. Department of Justice. 1997.)

Update

“Scholastic records” means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the institution.

They may include:

- ◆ Documentation pertinent to educational ***growth and*** development ***of students at they progress through school,***
- ◆ Student disciplinary records,
- ◆ Achievement and test data,
- ◆ Cumulative health records,
- ◆ Reports of assessments for eligibility for special education,
- ◆ ***Individualized Education Programs***

But scholastic records do *not* include:

- ◆ Records of instructional, supervisory, administrative and ancillary educational personnel that are ***kept in the sole possession of the maker of the record and are not accessible or revealed to another person except a temporary substitute for the maker of the record,***
- ◆ Notice of adjudication or conviction ***received by a superintendent*** relating to incidents which did *not* occur on school property or during a school-sponsored activity.

§22.1-287 Limitations on access to records

Update

No teacher, principal or ***employee of any public school,*** nor any school board member ***shall permit*** access to ***any records concerning any particular pupil enrolled in the school in any class to any person except under judicial process*** unless the person is one of the following:

- ◆ ***Either parent of such pupil or such pupil; provided that a school board may require that such pupil, if he be less than eighteen years of age, as a condition precedent to access to such records, furnish written consent of his or her parent for such access;***
- ◆ A person designated in writing ***by such pupil if the pupil is eighteen years of age or older or by either parent of such pupil if the pupil is less than eighteen years of age,***
- ◆ The principal, ***or someone designated by him,*** of the school where the ***pupil*** attends or has attended, or intends to enroll,
- ◆ The current teachers of ***such pupil,***

◆ VI. CONFIDENTIALITY AND STUDENT RECORDS

- ◆ State or local law-enforcement *or correctional personnel, including a law-enforcement officer, probation officer, parole officer or administrator, or a member of a parole board, seeking information in the course of his duties;*
- ◆ The Superintendent of Public Instruction, *a member of his staff, the division superintendent of schools where the pupil attends, has attended, or intends to enroll or a member of his staff,*
- ◆ *Or an officer or employee of a county or city agency responsible for protective services to children, as to a pupil referred to that agency as a minor requiring investigation or supervision by that agency.*

A parent or pupil entitled to see the records pursuant to subdivision A 1 of this section shall have access to all records relating to such pupil maintained by the school except as otherwise provided by law and need only appear in person during regular hours of the school day and request to see such records. No material concerning such pupil shall be edited or withheld except as otherwise provided by law, and the parent or pupil shall be entitled to read such material personally.

The restrictions imposed by this section shall not apply to the giving of information by school personnel concerning participation in athletics and other school activities, the winning of scholastic or other honors and awards, and other like information.

A division superintendent of schools may, in his discretion, provide information to the staff of a college, university, or educational research and development organization or laboratory if such information is necessary to a research project or study conducted, sponsored, or approved by the college, university, or educational research and development organization or laboratory and if no pupil will be identified by name in the information provided for research;

Update *The name and address of a pupil, the record of a pupil's daily attendance, a pupil's scholastic record in the form of grades received in school subjects, the names of a pupil's parents, a pupil's date and place of birth, and the names and addresses of other schools a pupil has attended may be released to an officer or employee of the United States government seeking this information in the course of his duties when the pupil is a veteran of military service with the United States, an orphan or dependent of such veteran, or an alien;*

The record of a pupil's daily attendance shall be open for inspection and reproduction to an employee of a local department of welfare or social services who needs the record to determine the eligibility of the pupil's family for public assistance.

Related Local School Board Policy

Serious Habitual Offender Comprehensive Action Program (SHOCAP)

The Seriously Habitual Offender Comprehensive Action Program (SHOCAP) is a multidisciplinary interagency case management and information sharing system. SHOCAP (916.1-330.1) was enacted in 1993. It enables a juvenile and the criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious crimes and delinquent acts. SHOCAP pertains to minors who have been adjudicated delinquent or convicted of the following offenses:

- ◆ Murder or attempted murder,
- ◆ Armed robbery,
- ◆ Any felony sexual assault or malicious wounding
- ◆ Committing offenses at least three times which would be felonies or Class 1 misdemeanors if they were committed by an adult.

Juvenile offenders under SHOCAP supervision at the time of their eighteenth birthday who have been committed to state care pursuant to §16.1-278.8 (14) or §16.1-285.1 may continue to be supervised by SHOCAP until their twenty-first birthday.

Each SHOCAP must perform the following tasks:

- ◆ Supervise serious or habitual juvenile offenders in the community and juveniles under probation or parole supervision.
- ◆ Coordinate and enhance conduct control, supervision and treatment efforts.
- ◆ Increase the opportunity for success with juvenile offenders.
- ◆ Assist in the development of early intervention strategies.

Establishing a SHOCAP Committee

Any city or county governing body can establish a SHOCAP committee. However, the city or county governing body must notify the Department of Criminal Justice Services (DCJS) within forty-five days of such an action. A SHOCAP committee consists of the following representatives from the community:

- ◆ Local law-enforcement authorities
- ◆ Schools
- ◆ Attorneys for the Commonwealth
- ◆ Juvenile Court Services
- ◆ Juvenile detention centers or group homes
- ◆ Mental and medical health agencies
- ◆ State and local children and family service agencies
- ◆ The Department of Juvenile Justice.

Confidentiality and the Penalty for Unauthorized Disclosure

Each SHOCAP committee shall share among its members and with other SHOCAP committees otherwise confidential information on identified serious or habitual juvenile offenders. Every person, including members of the SHOCAP committee, who is to receive confidential information pursuant to this article shall maintain the confidentiality of that information.

◆ VI. CONFIDENTIALITY AND STUDENT RECORDS

All records and reports concerning serious or habitual juvenile offenders made available to members of a SHOCAP committee and all records and reports identifying an individual offender which are generated by the committee from such reports shall be confidential and shall not be disclosed, except as specifically authorized by this article or other applicable law. Disclosure of the information may be made to other staff from member agencies as authorized by the SHOCAP committee for the furtherance of case management, community supervision, conduct control and locating of the offender for the application and coordination of appropriate services. Staff from the member agencies who receive such information will be governed by the confidentiality provisions of this article. The staff from the member agencies who will qualify to have access to the SHOCAP information shall be limited to those individuals who provide direct services to the offender or who provide community conduct control and supervision to the offender.

The provisions of this article authorizing information sharing between and among SHOCAP committees shall take precedence over the provisions of (i) Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title governing dissemination of court and law-enforcement records concerning juveniles, (ii) Article 5 (§ [22.1-287](#) et seq.) of Chapter 14 of Title 22.1 governing access to pupil records, (iii) Title 37.1 and any regulations enacted pursuant thereto governing access to juvenile mental health records, and (iv) Title 63.1 and any regulations enacted pursuant thereto governing access to records concerning treatments or services provided to a juvenile.

E. It shall be unlawful for any staff person from a member agency to disclose or to knowingly permit, assist or encourage the unauthorized release of any identifying information contained in any reports or records received or generated by a SHOCAP committee. A violation of this subsection shall be punishable as a Class 3 misdemeanor.



Related Reading

Michael Medaris. (August 1996). ***Serious Habitual Offender Comprehensive Action Program***. Office of Juvenile Justice and Delinquency Prevention, U. S. Department of Justice.

Related Local School Board Policy

VII. REFERENCES

Organization of Code of Virginia: Table of Contents

Title 1 -	General Provisions
Title 2.1 -	Administration of the Government Generally
Title 2.2 -	Administration of Government
Title 3.1 -	Agriculture, Horticulture and Food
Title 4.1 -	Alcoholic Beverages and Industrial Alcohol
Title 5.1 -	Aviation
Title 6.1 -	Banking and Financing
Title 7.1 -	Boundaries, Jurisdiction and Emblems of the Commonwealth
Title 8.01 -	Civil Remedies and Procedures
Title 8.1 -	Commercial Code – General Provisions
Title 8.2 -	Commercial Code – Sales
Title 8.2A -	Commercial Code – Leases
Title 8.3A -	Commercial Code – Negotiable Instruments
Title 8.4 -	Commercial Code – Bank Deposits and Collections
Title 8.4A -	Commercial Code – Funds Transfers
Title 8.5A -	Commercial Code – Letters of Credit
Title 8.6A -	Commercial Code – Bulk Transfers
Title 8.7 -	Commercial Code – Warehouse Receipts, Bills of Lading and Other Documents of Title
Title 8.8A -	Commercial Code – Investment Securities
Title 8.9 -	Commercial Code – Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper
Title 8.9A -	Secured Transactions
Title 8.10 -	Commercial Code – Effective Date – Transitional Provisions
Title 8.11 -	1973 Amendatory Act – Effective Date and Transition Provisions
Title 9 -	Commissions, Boards and Institutions Generally
Title 10.1 -	Conservation
Title 11 -	Contracts
Title 12.1 -	State Corporation Commission
Title 13.1 -	Corporations
Title 14.1 -	Costs, Fees, Salaries and Allowances
Title 15.2 -	Counties, Cities and Towns
Title 16.1 -	Courts Not of Record
Title 17.1 -	Courts of Record
Title 18.2 -	Crimes and Offenses Generally
Title 19.2 -	Criminal Procedure
Title 20 -	Domestic Relations
Title 21 -	Drainage, Soil Conservation, Sanitation and Public Facilities Districts
Title 22.1 -	Education
Title 23 -	Educational Institutions
Title 24.2 -	Elections
Title 25 -	Eminent Domain

◆ VII. REFERENCES

Title 26 -	Fiduciaries Generally
Title 27 -	Fire Protection
Title 28.2 -	Fisheries and Habitat of the Tidal Waters
Title 29.1 -	Game, Inland Fisheries and Boating
Title 30 -	General Assembly
Title 31 -	Guardian and Ward
Title 32.1 -	Health
Title 33.1 -	Highways, Bridges and Ferries
Title 34 -	Homestead and Other Exemptions
Title 35.1 -	Hotels, Restaurants, Summer Camps, and Campgrounds
Title 36 -	Housing
Title 37.1 -	Institutions for the Mentally Ill; Mental Health Generally
Title 38.2 -	Insurance
Title 40.1 -	Labor and Employment
Title 41.1 -	Land Office
Title 42.1 -	Libraries
Title 43 -	Mechanics' and Certain Other Liens
Title 44 -	Military and Emergency Laws
Title 45.1 -	Mines and Mining
Title 46.2 -	Motor Vehicles
Title 47.1 -	Notaries and Out-Of-State Commissioners
Title 48 -	Nuisances
Title 49 -	Oaths, Affirmations and Bonds
Title 50 -	Partnerships
Title 51.1 -	Pensions, Benefits, and Retirement
Title 51.5 -	Persons With Disabilities
Title 52 -	Police (State)
Title 53.1 -	Prisons and Other Methods of Correction
Title 54.1 -	Professions and Occupations
Title 55 -	Property and Conveyances
Title 56 -	Public Service Companies
Title 57 -	Religious and Charitable Matters; Cemeteries
Title 58.1 -	Taxation
Title 59.1 -	Trade and Commerce
Title 60.2 -	Unemployment Compensation
Title 61.1 -	Warehouses, Cold Storage and Refrigerated Locker Plants
Title 62.1 -	Waters of the State, Ports and Harbors
Title 63.1 -	Welfare (Social Services)
Title 64.1 -	Wills and Decedents' Estates
Title 65 -	Workmen's Compensation
Title 65.1 -	Worker's Compensation
Title 65.2 -	Worker's Compensation
Title 66 -	Youth Services

Code of Virginia: Classification of Criminal Offenses

Seriousness of the Offenses (from the most to the least severe)

(§18.2-10) Felony Conviction: F

<u>Classification</u>	<u>Symbol</u>	<u>Sentence Upon Conviction</u>
Class 1 felony	F1	Death or imprisonment for life and subject to a fine of not more than \$100,000.
Class 2 felony	F2	Imprisonment for life or for any term not less than twenty years and a fine of not more than 100,000.
Class 3 felony	F3	A term of imprisonment of not less than five years or more than twenty years and a fine of not more than \$100,000.
Class 4 felony	F4	A term of imprisonment of not less than two years nor more than ten years and a fine of not more than \$100,000.
Class 5 felony	F5	A term of imprisonment of not less than one year nor more than ten years or, in the discretion of the jury, or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$ 2,500, either or both.
Class 6 felony	F6	A term of imprisonment of not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.

◆ VII. REFERENCES

(§18.2-11) Misdemeanor Conviction: M

<u>Classification</u>	<u>Symbol</u>	<u>Sentence Upon Conviction</u>
Class 1 misdemeanor	M1	Confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.
Class 2 misdemeanor	M2	Confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.
Class 3 misdemeanor	M3	A fine of not more than \$500.
Class 4 misdemeanor	M4	A fine of not more than \$250.



VIII. RESOURCES

Virginia Resources

OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA

900 East Main Street
Richmond, VA 23219
(804) 786-2071 FAX (804) 786-1991
Attorney General: Jerry Kilgore
<http://www.oag.state.va.us/>

The Office of the Attorney General provides legal advice and representation to state government and to local officials involved in the application and enforcement of law. It is one of Virginia's largest law firms.

SUPREME COURT OF VIRGINIA

Supreme Court Building
100 North 9th Street
Richmond, VA 23219
<http://www.courts.state.va.us/scv/home.html>

Although the Supreme Court of Virginia possesses both original and appellate jurisdiction, its primary function is to review decisions of lower courts, including the Court of Appeals, from which appeals have been allowed. Article VI, Section 4, of the Constitution of Virginia places upon the Chief Justice of the Supreme Court of Virginia the responsibility of supervising the administration of the entire court system of the Commonwealth.

VIRGINIA BAR ASSOCIATION

701 E. Franklin Street
Richmond, VA 23219
(804) 644-0041 FAX (804) 644-0052
<http://www.vba.org>

The VBA works to keep lawyers informed of legal issues and public policy, giving the legal community a concerned, effective voice on those issues. The Association states its aim as: "Cultivating and advancing the science of jurisprudence, promoting reform in the law and in judicial procedure, facilitating the administration of justice in this state, and upholding and elevating the standard of honor, integrity and courtesy."

VIRGINIA CENTER FOR SCHOOL SAFETY

Department of Criminal Justice Services
805 East Broad Street
Richmond, VA 23210
(804) 371-6506
<http://www.vaschoolsafety.com>

◆ VIII. RESOURCES

The Virginia Center for School Safety serves as a comprehensive resource center for information and research about school safety in the Commonwealth. The Center was created by the 2000 General Assembly and placed in the Department of Criminal Justice Services. The legislation enables the Center to become an umbrella of state services available to the localities. The intent of the legislation is to provide resources, training, and data collection to the localities as well as best practices in school safety initiatives.

VIRGINIA DEPARTMENT OF CORRECTIONAL EDUCATION

James Monroe Building, 7th Floor
101 N. 14th Street, Richmond 23219
(804) 225-3310 FAX (804) 225-3255
Superintendent Walter A. McFarlane
<http://www.dce.state.va.us>

DCE provides educational services in adult and youth correctional facilities throughout Virginia. The department strives to provide quality educational programs in correctional facilities throughout Virginia that enable incarcerated youth and adults to become responsible, productive, tax-paying members of their communities.

VIRGINIA DEPARTMENT OF CRIMINAL JUSTICE SERVICES

CRIME PREVENTION AND LAW ENFORCEMENT

805 East Broad Street
Richmond, VA 23210
(804) 371-0863 FAX (804) 371-8981
<http://www.dcjs.state.va.us>

The Department of Criminal Justice Services distributes federal and state funding to localities, state agencies and nonprofit organizations in the areas of law enforcement, prosecution, crime and delinquency prevention, juvenile justice, victims services, corrections, and information systems. The Crime Prevention and Law Enforcement Section (CPLE) provides grants to law enforcement agencies, develops specialized training, assists in the Virginia Accreditation program, and oversees a variety of crime prevention services through the Crime Prevention Center.

VIRGINIA DEPARTMENT OF EDUCATION

OFFICE OF COMPENSATORY PROGRAMS

101 N. 14th Street
Richmond, VA 23218
(804) 225-2871 FAX (804) 371-7347

The Virginia Department of Education is the state agency providing leadership for public education in Virginia. The Department administers the Safe and Drug-Free Schools and Communities Act (SDFSCA) Program which is intended to assist schools and communities in preventing violence in and around schools and to strengthen efforts to prevent the use of alcohol, tobacco, and other drugs. The program provides training, technical assistance, and publications related to the prevention of youth violence and substance abuse.

VIRGINIA DEPARTMENT OF JUVENILE JUSTICE

700 E. Franklin Street
Richmond, VA 23218
(804) 371-0700 FAX (804) 371-0773
www.djj.state.va.us

The mission of DJJ is to protect the public through a balanced approach of comprehensive services that prevent and reduce juvenile delinquency while providing the opportunity for delinquent youth to develop into responsible citizens. The agency provides support for community programs and services, community supervision and case management, and custody and care of committed juveniles.

VIRGINIA SCHOOL BOARDS ASSOCIATION

2320 Hunters Way
Charlottesville, VA 22911
(434) 295-8722 FAX (434) 295-8785
<http://www.vsba.org/>

VSBA promotes the quality of education through services to local school boards. It represents school boards' interests before the legislature, state agencies, Congress, and other state and national regulatory bodies. VSBA also offers information and legislative news about issues affecting public education.

VIRGINIA YOUTH VIOLENCE PROJECT

405 Emmet Street
Charlottesville, VA 22903-2495
(804) 924-8929 FAX (804) 924-1433
<http://curry.edschool.Virginia.EDU/curry/centers/youthvio/>

Project focuses on identifying effective methods and policies for youth violence prevention and response, conducting and disseminating research, and providing education and training for educators, psychologists, and other colleagues in the social, legal, and human services professions.

National Resources***Criminal Justice*****National Criminal Justice Reference Service (NCJRS)**

One of the most extensive sources of information on criminal justice, the NCJRS contains specialized information centers which provide publications and other information to constituencies of each of the U. S. Department of Justice Office of Justice Programs and the Office of National Drug Control Policy. Each agency has established specialized information centers and each has its own 800-number and staff to answer questions about the agency's mission and initiatives. This information:

◆ VIII. RESOURCES

National Institute of Justice (NIJ)

800-851-3420

The research, evaluation, and development agency of the U. S. Department of Justice, whose mission is to develop knowledge that can help prevent and reduce crime and improve the criminal justice system.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

800-638-8736

The agency that provides national leadership, coordination, and resources to prevent and treat juvenile delinquency; improve effectiveness and fairness of the juvenile justice system; and address the problem of missing and exploited children.

Office for Victims of Crime (OVC)

800-627-6872

The Office of Victims of Crime is committed to enhancing the Nation's capacity to assist crime victims and to provide leadership in changing attitudes, policies, and practices to promote justice and healing for all victims of crime.

Bureau of Justice Statistics

800-732-3277

The statistical arm of the U. S. Department of Justice, responsible for collecting, analyzing, and reporting data related to criminal victimization and the administration of justice.

Bureau of Justice Assistance (BJA)

800-688-4252

The agency that provides funding, training, technical assistance, and information to States and communities in support of innovative programs to improve and strengthen the Nation's criminal justice system.

Office of National Drug Control Policy (ONDCP)

800-666-3332

The national source of drug and crime statistics and related information.

Clearinghouses

The Federal Government funds a variety of clearinghouses. Each clearinghouse usually deals with a specific topic (e.g., drug abuse, delinquency) and distributes a variety of materials including program models, grant information, research and evaluation findings, newsletters, information on foundations and associations with related interests.

National Clearinghouse for Alcohol and Drug Information (NCADI)

P. O. Box 2345

Rockville, MD 20847

Telephone

800-729-6686

FAX

301-468-6433

301-468-2600

<http://www.health.org>

This comprehensive federal clearinghouse on alcohol and drug information offers an extensive collection of publications, posters, and action kits. Call for a free catalogue or access webpage

which has links to many key agencies and organizations.

National Clearinghouse on Child Abuse and Neglect

P. O. Box 1182

Washington, DC 20013-1182

Telephone 800-394-3366

FAX

703-385-3206

703-385-7565

<http://www.calib.com/nccanch>

National Resource for professionals seeking information in the prevention, identification, and treatment of child abuse and neglect.

National Clearinghouse on Families and Youth

P. O. Box 13505

Silver Spring, MD 20911-3505

Telephone 301-608-8098

FAX 301-608-8721

<http://www.ncfy.com>

Links those interested in youth issues with resources they need to better serve young people, families, and communities. Offers library on family and youth issues, special issue forums, and publications.

National Dropout Prevention Center

Clemson University

209 Martin Street

Clemson, SC 29631-1555

Telephone (864) 656-0136

<http://www.dropoutprevention.org>

This Center was established in 1986 to serve as an information clearinghouse on issues related to school reform and dropout prevention. It offers an on-site library and database of information on dropout prevention programs and educational strategies, technical assistance, training, and resources.

National Resource Center for Safe Schools

Northwest Regional Educational Laboratory

101 SW Main, Suite 500, Portland, OR 97204

Telephone: (503) 275-0131

Fax: (503) 275-0444

www.nwrel.org/safe/

The National Resource Center for Safe Schools is operated by the Northwest Regional Educational Laboratory and was established in 1999 with funding from the U.S. Department of Education's Safe and Drug-Free Schools Program and the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention. The Center works with schools, communities, state and local education agencies, and other concerned individuals and agencies to create safe learning environments and prevent school violence.

National School Safety Center

141 Duesenburg Drive

Suite 11

Westlake Village, CA 91362

◆ VIII. RESOURCES

Telephone 805-373-9977

FAX 805-373-9277

<http://www.nssc1.org>

Serves as a national clearinghouse for school safety programs and activities related to campus security, school law, community relations, student discipline and attendance, and the prevention of drug abuse, gangs, bullying and weapon use in schools. NSSC's primary objective is to focus national attention on the importance of providing safe and effective schools. The Center has a variety of publications, resource papers, and display posters.

National Youth Gang Center

National Youth Gang Center

P.O. Box 12729, Tallahassee, FL 32317

Phone: (850) 385-0600

Fax: (850) 386-5356

<http://www.iir.com/nygc>

The purpose of the National Youth Gang Center is to expand and maintain the body of critical knowledge about youth gangs and effective responses to them. The Center assists state and local jurisdictions in the collection, analysis, and exchange of information on gang-related demographics, legislation, literature, research, and promising program strategies. It also coordinates activities of the OJJDP activities of the OJJDP Youth Gang Consortium – a group of federal agencies, gang program representatives, and service providers.

Other Resources for Families, Communities, and Schools

National Alliance for Safe Schools (NASS)

P. O. Box 1068

College Park, MD 20741

Telephone (888) 510-6500 or (301) 935-6500

<http://www.safeschools.org>

NASS, founded in 1977, is a non-profit, tax-exempt corporation which provides technical assistance, training and research to school districts interested in reducing school-based crime and violence. Website offers information about Alliance workshops and activities as well as links to School Safety-related information from the American Association of School Administrators, the National Association of Secondary School Principals, the U. S. Department of Education, and the Council of Chief State School Officers.

Internet Resources

Children's Safety Network of the National Injury and Violence Prevention Resource Network

<http://www.edc.org/HHD/csn/>

Links to school safety resources and the Centers for Disease Control and Prevention; Fact Sheet on school injuries and publications list.

National Alliance for Safe Schools

<http://www.safeschools.org>

Information about Alliance workshops and activities as well as links to School Safety-related information from the American Association of School Administrators, the National Association of Secondary School Principals, the U. S. Department of Education, and the Council of Chief State School Officers.

National Center for Alcohol and Drug Information

<http://www.health.org>

As the federal clearinghouse for alcohol and drug information, the Center's webpage offers the most extensive list of such information as well as links to virtually all national organizations and resources devoted to alcohol and/or drug prevention and treatment.

National Council of Juvenile and Family Court Judges

<http://www.ncjfcj.unr.edu>

Based at the University of Nevada, the Council's webpage offers information on projects and resources. Of particular interest to school administrators is the National Center for Juvenile Justice (<http://www.ncjfcj.unr.edu/homepage/ncjj.htm/>) which is a private research organization with an exclusive focus on juvenile delinquency, child abuse, and neglect. The Center engages in research, program evaluation, and program planning in juvenile delinquency/child abuse and neglect, and information dissemination and consultation.

National Education Association

<http://www.nea.org>

Includes many education resources including a Safe and Secure Schools page (<http://nea.org/resource/safe.html>) which links to many internet resources on school safety.

National School Safety Center

<http://www.nssc1.org>

Comprehensive federal clearinghouse on school safety. Webpage provides information about NSSC including a list of materials available.

Office of Juvenile Justice and Delinquency Prevention (U. S. Dept. of Justice)

<http://ojjdp.ncjrs.org>

Numerous links to juvenile justice issues, including teen courts, peer justice, and funding opportunities. Also provides access to the publication ***Creating Safe and Drug-Free Schools: An Action Guide***.

Partners Against Violence (PAVNET Online)

<http://www.pavnet.org>

Promising programs, funding opportunities, and sources of information and technical assistance as well as links to government agencies and other organizations which address the issue of violence.

◆ VIII. RESOURCES

Safe, Disciplined, and Drug-Free Schools

<http://www.ed.gov/offices/OESE/SDFS>

U. S. Department of Education's website provides information on Safe and Drug-Free Schools initiatives and related school safety and youth substance abuse and violence issues. Offers full-text versions of some publications including ***Creating Safe and Drug-Free Schools: An Action Guide, Manual to Combat Truancy, and Manual on School Uniforms***. Also has links to key related websites.

Safe Schools Coalition, Inc.

[http:// www.ed.mtu.edu/safe/](http://www.ed.mtu.edu/safe/)

Non-profit agency which supports safe school initiatives; provides links to calendars of events and resources which focus on issues such as gangs, school violence, sexual assault and harassment on campus, student discipline, and dropout prevention. Also, the agency offers access to research databases, book reviews, listservs on school safety and security, and model program descriptions.

How to Access the Code of Virginia, Federal Laws, and Supreme Court Decisions on the Internet

The ***Code of Virginia*** can be accessed through the Internet by taking the following steps:

- Go to <http://leg1.state.va.us/>
- Under Searchable Databases, select "***The Code of Virginia***...statutory law."
- On the next page enter your search phrase or ***Code*** section number, then submit your request
- Results of your search will appear.

Supreme Court Decisions on the Internet

http://www.access.gpo.gov/su_docs/supcrt

Federal Laws on the Internet

<http://www.legal.gsa.gov>

IX. GLOSSARY

NOTE REGARDING JUVENILE JUSTICE

- II *There are important differences between proceedings against adults and those against juveniles.*
- II *Persons under 18 years of age (other than those transferred for trial as adults) are “adjudicated delinquent of offenses that would be crimes if committed by adults” rather than found guilty of felonies or misdemeanors.*
- II *Students over 18 years of age, however, are tried as adults and, if found guilty, convicted of felonies or misdemeanors.*

abused child:

§ 16.1-228, **Code of Virginia** defines an “abused or neglected child” as one

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;
2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;
3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

adjudicatory hearing:

In juvenile justice usage, it is the fact-finding process by which the juvenile court determines whether or not sufficient evidence exists to sustain the allegations in a petition. It occurs after the petition has been filed and after a detention hearing has been held.

acquittal:

A verdict of not guilty in a criminal case.

adult:

A person who is eighteen years of age or older, who is within the original jurisdiction of a criminal court rather than a juvenile court because his or her age at the time of an alleged criminal act was above a statutorily specified limit. A juvenile court may waive jurisdiction and transfer a juvenile to a criminal court for prosecution as an adult.

◆ IX. GLOSSARY

arraignment hearing:

The hearing that occurs before a court having jurisdiction in a criminal case, in which the identity of the defendant is established, the defendant is informed of the charges and of his or her rights, and the defendant is required to enter a plea.

assault:

Unlawful or intentional infliction of bodily injury or just an attempt or threat of bodily injury is an assault. Any threatening act that puts another person in reasonable fear of physical injury. [Words alone are not an assault. If the fear of physical injury is unreasonable, the conduct is not an assault. *Virginia Model Jury Instructions*, Instruction 36.000, 1993 Civil Edition.

authority (local, state, federal):

Each unit of government is empowered to perform its responsibilities to the public by local ordinances, state statutes and federal laws. Ordinances are laws created by local units of government that apply to school divisions, persons and institutions within a town, city, or county. Statutes are enacted by the General Assembly and apply to persons and institutions on a statewide basis. Federal statutes and regulations are national laws enacted by Congress which apply to persons and educational institutions located in every state.

bail/bond:

An amount of money or property sometimes required by a judge or magistrate to be paid to the court by the defendant to insure that he or she will appear for trial. If he or she does not appear, the money may be forfeited to the court.

bail hearing:

A hearing in which a judicial officer (judge, magistrate, or clerk of court) determines whether a defendant should be released from custody pending trial. The judicial officer also determines the terms and the conditions of release.

battery:

An actual, intentional physical contact without the victim's permission is a battery. A battery is a touching however slight, of another person in a rude, insulting or angry way.

boundaries (school grounds and school property):

All real and personal property with a title of ownership vested in the school board or a city that is necessary to use for school purposes is school property. School property includes (but is not limited to) school buildings, surrounding land, parking lots, school buses (§18.2-128), land outside of corporate city limits that is not adjacent to the school building and has been designated for school purposes (§22.1-125) [desks, lockers, textbooks, library books, computers, etc.]

Capias:

A document issued by the court for the arrest of a person; issued in case of contempt, or where an indictment has been issued, or to bring in a witness who does not obey the subpoena.

Child in Need of Services (CHINS)

According to §16.1-228, "Child in need of services" means a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone. However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

Child in Need of Supervision (CHINS)

According to §16.1-228, "Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of §22.1-258; or
2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

Child Protective Services:

Local social service agencies under the Virginia Department of Social Services that offer assistance including investigating child abuse and neglect cases and developing strategies to prevent child abuse and neglect.

civil liability:

Legal duty or responsibility for private acts which arise under municipal law as opposed to criminal law.

Code of Virginia:

The laws of the Commonwealth of Virginia created by the General Assembly which are recorded in a volume of books referred to as the Code, and reproduced on electronic databases including databases on the Internet.

◆ IX. GLOSSARY

Commonwealth's Attorney:

Also known as the prosecutor; a lawyer elected by the people to prosecute criminal and traffic cases; lawyer for the Commonwealth who represents the interests of the general public.

compulsory attendance:

The Virginia Code §22.1-254 contains a mandatory requirement that every parent, guardian, or other person send any child in his or her control to a public or private school, or have the child tutored, or provide for home instruction, or send the child to an alternative program of study. This law applies to any child who has reached his or her fifth birthday and who has not reached his or her eighteenth birthday on or before September 30th of any school year.

continuance:

Postponing of a case until a later date upon request by either party or the court.

continuum of care:

A level of service provided by juvenile courts for non-delinquent and adjudicated youth under the court's jurisdiction. It identifies behavior associated with future delinquency by starting with the most restrictive level of service, including in-home suspension, counseling and electronic monitoring.

conviction:

Court's judgment finding the defendant guilty of a crime.

corporal punishment:

The infliction or causing the infliction of physical pain on a student as a means of discipline through the use of unreasonable or unnecessary force.

custody

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in §20-107.2.

defendant:

Person who is charged with a crime.

defense counsel:

Lawyer for the defendant.

delinquent

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of §16.1-269.6.

"Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under

federal law, (ii) a violation of §18.2-308.7 or (iii) a violation of a court order as provided for in §16.1-292, but shall not include an act other than a violation of §18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §16.1-241 and §16.1-278.9, the term shall include a refusal to take a blood or breath test in violation of §18.2-268.2 or a similar ordinance of any county, city or town.

dismissal:

A finding of not guilty; or a refusal by the court to allow a case to continue to be prosecuted.

disposition hearing:

A hearing in juvenile court conducted after an adjudicatory hearing and subsequent to receipt of the report of any predisposition investigation, to determine the most appropriate form of custody and treatment for a juvenile who has been judged a delinquent, status offender or who is a dependent.

disruptive behavior:

Disruptive behavior means conduct that interrupts or obstructs the learning environment.

element of an offense:

Any conduct, circumstance, condition, or state of mind which in combination with other conduct, circumstances, conditions or states of mind constitutes a unlawful act.

evidence:

Statements by witnesses, documents and objects presented to the court which can be considered by the judge and/or jury in determining whether the defendant is guilty or not guilty.

exclusion of Witnesses (Exclude):

Removal of witnesses from the courtroom.

extortion:

Unlawfully obtaining or attempting to obtain something of value from another by compelling the other person to deliver it by the threat of eventual physical injury or other harm to that person or the person's property, or a third person. *Blackmail* is the common name for extortion where the threat is not physical but relates to exposing some secret, true or alleged fact which would do harm to someone's circumstances or damage his or her reputation.

family or household member:

Includes: spouse (regardless of whether you live together); ex-spouse (regardless of whether you live together); parents, children, stepparents and stepchildren, brothers and sisters, grandparents, grandchildren, and in-laws (if you live in the same house); cohabitants (those who live together) and those who cohabited in the past year and their children; and persons who have a child in common (even if you have never lived together).

felony:

A criminal offense which is more serious than a misdemeanor and which can carry harsher penalties including imprisonment of a term greater than one year.

◆ IX. GLOSSARY

Juveniles are “adjudicated delinquent of offenses that would be crimes if committed by adults” rather than found guilty of felonies or misdemeanors.

FERPA:

The Family Educational Rights and Privacy Act is a federal law designed to protect the rights of parents and students who are eighteen years of age and older or attending a post-secondary institution, to review the student’s educational records and amend the record if the parent or student believes it is inaccurate, misleading or in violation of the student’s rights.

gang:

The word “gang” constantly requires modification and explanation because the definition is largely determined by the user. However, recurrent criteria that various definitions have in common are as follows:

- ◆ A defined, formalized or highly structured group of youths with designated leaders
- ◆ Membership is based on cultural factors such as language, ethnicity, race, or physical characteristics
- ◆ Individuals are linked by the nature of their activities (financial, territorial, social), often involving law-violating behavior that is often injurious to public health and public morals.
- ◆ Symbols of identification are used, including colors or style of dress and tattoos.
- ◆ Continuous methods of association (initiation, sign language or codes)
- ◆ Identified by a specific territory based on geography, financial status or personal relationships.

graduated court sanctions:

The approach to delinquency and recidivism a juvenile court adopts that includes comprehensive prevention programs coupled with a series of progressively more intensive treatment and disposition alternatives.

harassment, sexual:

Sexual harassment is a prohibited employment practice that includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- ◆ submission to such conduct is made explicitly or implicitly a term or condition of an individual’s employment or academic achievement;
- ◆ submission to or rejection of such conduct by an individual is used as a basis for employment or academic decisions affecting that individual; and/or
- ◆ such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance or creating an intimidating, hostile, or offensive work or learning environment. *U.S. Equal Employment Opportunity Commission*

hate crimes:

Hate crimes are law violations that manifest evidence of prejudice based upon race religion, sexual orientation or ethnicity. (Public Law 101-275).

hearsay:

A statement based upon information heard from another person. It is generally not admissible as evidence in court, although there are exceptions to the rule.

home incarceration or home confinement:

A sentencing option that enables an offender to serve a sentence at his or her place of residence. It is an alternative to building a prison that involves curfews, parole, or home detention with electronic monitoring.

indictment:

A formal written document presented by a grand jury which legally accuses a person of committing a crime.

intake officer:

A member of the juvenile court staff who receives and reviews the juvenile's case and decides whether or not to file a petition for a hearing or divert the case from court. The intake officer is a youth's first point of contact with the juvenile court.

jury:

A panel of twelve citizens (felony charge) or seven citizens (misdemeanor charge) who decide the guilt or innocence of a defendant and recommend a sentence.

juvenile or minor:

In Virginia, a person who is younger than eighteen years of age.

knowingly:

A state of mind that involves substantial certainty or knowledge and intelligence that a result or consequence will occur.

magistrate:

A judicial officer who has the authority to set bail and to issue criminal charges based upon evidence presented by an individual or a law enforcement officer.

material witness:

A witness who has firsthand knowledge about the facts of a case.

misdemeanor:

An offense which is less serious than a felony and carries lesser penalties, ranging from a fine only to a maximum sentence of 12 months in jail. Juveniles are "adjudicated delinquent of offenses that would be crimes if committed by adults" rather than found guilty of felonies or misdemeanors.

motion:

Request by a defense attorney or prosecutor that the judge make a decision on a specific issue or point of law.

neglected child:

See "abused child."

Nolle Prosequi (nol pros):

Prosecutor's decision with agreement by the court not to prosecute a case at the present time. The charge may be brought again.

◆ IX. GLOSSARY

parole:

Conditional release from jail, prison or other confinement after actually serving part of the sentence. It entitles a parolee to serve the remainder of the term outside of the confines of an institution, if he or she complies with all of the terms and conditions of the parole order.

petition, filing of:

Formally submitting to a court's record a document that alleges that a juvenile is delinquent, abused or neglected, or a child in need of services, and asking that the court assume jurisdiction over the juvenile.

plea:

Defendant's answer to a charge (guilty, not guilty, nolo contendere {no contest}).

plea agreement:

An agreement in which a defendant pleads guilty in exchange for a prosecutor's recommendation for a particular sentence or particular charge. The judge must approve the agreement.

policy:

The general principles by which a government or unit of government is guided in its management of public affairs, or the legislature in its provisions.

preliminary hearing:

Hearing held before a judge in a General District Court or Juvenile and Domestic Relations Court to determine if there is probable cause that the felony crime charged was committed by the defendant. If the judge finds probable cause, the case is certified to the grand jury for indictment and trial in Circuit Court.

Presentence Investigation/Report (PSI):

Report prepared by a probation and parole officer to help the judge in deciding sentence. A victim impact statement may be included in the report.

probable cause:

A set of facts and circumstances which would lead a reasonably intelligent and prudent person to believe that a particular person had committed a specific crime; having reasonable grounds or suspicion to make or believe an accusation. Probable cause is the standard required to justify a search by law enforcement officers.

probation (supervised v. unsupervised):

Supervised probation is guidance, treatment or regulation by a probation agency of the behavior of a person who is subject to adjudication or who has been convicted of an offense resulting from a formal court order or a probation agency decision. Contact between the agency and the client occurs on a regular basis. The average probation period is six months to a year.

In *unsupervised probation*, contact occurs only when initiated by the client or other interested party outside the probation agency, and is not on a regular basis.

probation & parole officer:

A sworn officer of the court who is responsible for preparing Presentence Investigation Reports and providing supervision for offenders residing in the community.

prosecutor:

Another term for commonwealth's attorney, assistant commonwealth's attorney or deputy commonwealth's attorney.

protective Order:

An order issued by judge or magistrate for the purpose of protecting a family/household member from abuse.

public place:

A place to which the general public has a right to remain, not necessarily a place devoted solely to the uses of the public but a place that is accessible to the public and not private. It is a place in which the public has an interest in protecting the safety, health, welfare, and morals of the community.

reasonable suspicion:

The degree of articulable suspicion. The degree of suspicion required is less than the degree that is necessary for probable cause, but reasonable suspicion will justify a brief stopping of a person for an investigation of pending, ongoing, or past criminal conduct. Reasonable suspicion is the standard necessary to justify a search by school officials.

reckless:

The state of mind accompanying an act, in which a person disregards the possibility of injury or harmful consequences and although the person foresees such consequences, he or she proceeds in spite of his or her awareness.

recognizance:

The release of an arrested person on a written promise that he/she will return to court.

restitution:

Money ordered by the court to be paid back to a victim by the defendant for loss incurred as a result of the crime.

Safe and Drug-Free Schools Act of 2001:

Section IV of the Improving America's School's Act of 2001. Authorizes funding to support school- and community-based drug and violence prevention efforts.

School Resource Officer (SRO):

A School Resource Officer or SRO is a law-enforcement officer who works in local school divisions to ensure a school's safety by serving as a law-enforcement officer within the school, teaching classes related to law enforcement, serving as a community resource, and as a role model for students. SROs are sometimes also referred to as Community Resource Officers (CROs), school liaison officers, youth safety officers, and other titles that may have been developed locally.

◆ IX. GLOSSARY

search and seizure:

Search is the examination or inspection of a location (locker, desk, pockets, etc.), vehicle or person by a law-enforcement officer or other person authorized to do so, for the purpose of locating objects relating to or believed to be relate to criminal activity.

Seizure is the taking into custody, by law-enforcement officers or other persons authorized to do so, of objects relating to or believed to relate to criminal activity. The Fourth Amendment of the United States Constitution prohibits unreasonable search and seizure.

secure facility:

"Secure facility" or "detention home" means a local, regional or state public or private locked residential facility which has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

sentencing:

A hearing at which a judge imposes punishment on a convicted defendant.

sexual abuse:

Prohibited and legally punishable behavior that includes sex offenses such as rape, sodomy, and carnal abuse of a child, committed by and against students, school officials, and teachers.

SHOCAP:

The Seriously Habitual Offender Comprehensive Action Program (SHOCAP) is an interagency case management and information sharing system which enables the juvenile and criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts. A minor who is involved in SHOCAP has been adjudicated as a delinquent or convicted of murder, armed robbery, any felony sexual assault or malicious wounding, or convicted at least three times of offenses which would be felonies or Class 1 misdemeanors if committed by an adult.

show cause:

Order issued by the court for a person to show why they failed to comply with an instruction of the court.

status offense:

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult. Examples include being a runaway, truant, or in violation of curfew laws. "Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

subpoena:

A written, legal order telling a person to be in court at a specific time and place to give testimony.

supervised probation:

A period of time during which an offender must obey certain conditions set by the

court and probation and parole officer in lieu of serving the suspended portion of a jail or penitentiary sentence. The probation and parole officer monitors an offender's compliance with supervised probation and keeps the court informed.

Taken Under Advisement:

The judge withholds final disposition of the case until certain conditions set by the judge are met by the defendant.

trial:

Process by which guilt or innocence of a defendant is determined. Can be heard by a judge or jury.

truant:

A truant is a juvenile who has been adjudicated by a judicial officer of a juvenile court, as having committed the status offense of violating a compulsory school attendance law.

verdict:

The decision a jury or judge makes at the end of a trial about whether the defendant is guilty or not.

Victim Impact Statement (VIS):

A written statement which describes how the crime(s) has affected the victim and his/her family. This statement may be considered by the judge in deciding a sentence. If the judge orders a presentence investigation (PSI), the VIS becomes part of the PSI and is given to the defense attorney who may review it with the defendant.

Victim/Witness Program:

Program designed to provide support, answer questions, make referrals and explain the criminal justice process to victims and witnesses of crime.

violence:

Violence refers to all types of illegal behavior, either threatened or actual, that result in damage or destruction of property or the injury or death of an individual. It includes but is not limited to assault (threats of imminent harm, throwing objects without striking a person), battery (hitting, kicking, shoving, stabbing, tripping), child abuse, rape, vandalism, gang violence, and unreasonable force used in corporal punishment.

warrant:

Written, legal order authorizing a law enforcement officer to make an arrest or perform a search.

willfully:

Proceeding from voluntary or conscious motion of the will; intending or designing the result of an act which actually happens.

witness:

A person who has knowledge of the circumstances of a case; one who testifies as to what he or she has seen, heard, or otherwise observed, or has expert knowledge of.

◆ IX. GLOSSARY

zero tolerance:

“Zero tolerance” is a general policy in education and criminal justice which calls for imposing strict penalties for juveniles who are adjudicated in drug, violence and alcohol offenses such as driving while intoxicated, and taking preventive steps to limit such behavior. As a result of this policy, it is illegal in every state for persons under the age of 21 to purchase and possess alcohol in public.

X. LOCAL CONTACTS

Law-Enforcement Contacts

Police/Sheriff's Dept.	Telephone	Fax

State Police Contacts

Fire and Emergency Contacts

Fire Dept. Contact	Telephone	Fax

Rescue Squad Contact

◆ X. LOCAL CONTACTS

Emergency Services Contact

Juvenile Court Contacts

Intake Contacts

Telephone

Fax

Probation/Parole Contacts

Telephone

Fax

Judge(s)

Telephone

Fax

Attorneys

School Board Attorney

Telephone

Fax

X. LOCAL CONTACTS ♦

Commonwealth's Attorney	Telephone	Fax
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County Attorney	Telephone	Fax
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Health Department Contacts

Immunization Contacts	Telephone	Fax
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Clinic Contacts	Telephone	Fax
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Comprehensive Services Act Contacts

FAPT Contact(s)	Telephone	Fax
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Community Services Board Contacts

Emergency Services Contacts	Telephone	Fax
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◆ X. LOCAL CONTACTS

Mental Health Services Contacts

Telephone

Fax

Mental Retardation Services Contacts

Telephone

Fax

Social Services Contacts

Child Protective Services Contacts

Telephone

Fax

State Child Abuse Hotline 1-800-552-7096

Foster Care Contacts

Telephone

Fax

Eligibility Contacts

Telephone

Fax

◆ X. LOCAL CONTACTS

Other Community Resources

Agency	Contact	Telephone	Fax
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Agency	Contact	Telephone	Fax
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Agency	Contact	Telephone	Fax
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Agency	Contact	Telephone	Fax
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